



## USAID Trade Project

# Legal Gap Analysis *Consistency of Pakistan Customs Regime with the Revised Kyoto Convention*

**USAID Trade Project**  
USAID/Pakistan  
Office of Economic Growth & Agriculture  
Contract Number: EEM-I-03-07-00005

**June 2013**

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## Table of Contents

<b>Table of Abbreviations .....</b>	<b>i</b>
<b>Table of Authorities .....</b>	<b>ii</b>
<b>Executive Summary .....</b>	<b>1</b>
<b>RKC General Annex .....</b>	<b>4</b>
Introduction to the General Annex .....	4
<b>Chapter 1: General Principles .....</b>	<b>6</b>
<b>Chapter 2: Definitions .....</b>	<b>9</b>
<b>Chapter 3: Clearance and Other Customs Formalities .....</b>	<b>11</b>
<b>Chapter 4: Duties and Taxes .....</b>	<b>72</b>
<b>Chapter 5: Security .....</b>	<b>100</b>
<b>Chapter 6: Customs Control .....</b>	<b>108</b>
<b>Chapter 7: Application of Information Technology .....</b>	<b>123</b>
<b>Chapter 8: Relationship between the Customs and Third Parties .....</b>	<b>134</b>
<b>Chapter 9: Information, Decisions and Rulings Supplied by Customs .....</b>	<b>145</b>
<b>Chapter 10: Appeals in Customs Matters .....</b>	<b>162</b>

## List of Tables and Figures

Table 1 .....	2
Table 2: General Annex .....	4
Table 3 .....	5

## Table of Abbreviations

ATC	Appellate Tribunal of Customs
ADC	Additional Collector of Customs
ADRC	Alternative Dispute Resolution Committee
APTTA	Afghanistan-Pakistan Transit Trade Agreement
CCS	Customs Computerized System
CGO	Customs General Order
DTRE	Duty and Tax Remission for Exports
DG	Directorate General
EPZ	Export Processing Zones
FBR	Federal Board of Revenue
FPCCI	Federation of Pakistan Chamber of Commerce and Industry
FTO	Federal Tax Ombudsman
FED	Federal Excise Duty
GD	Goods Declaration
INTRA	Integrated Regulatory Authorities
IGM	Import General Manifest
KKH	Karakoram Highway
LC	Letter of Credit
LCS	Land Customs Station
LCCI	Lahore Chamber of Commerce and Industry
MoC	Ministry of Commerce
MCC	Model Customs Collectorate
MB	Manufacturing Bonds
NBP	National Bank of Pakistan
PACCS	Pakistan Computerized Customs System
POG	Policy Order of the Government
PPSCW	Printing & Publication Section, Customs Wing
PRAL	Pakistan Revenue Automation Ltd
PICCA	Pakistan and India Customs Cooperation Agreement
SBP	State Bank of Pakistan
SRO	Special Regulatory Order
TJV	Tarbela Joint Venture
UN	United Nations
WeBOC	Web Based One Customs
WCO	World Customs Organization

## Table of Authorities

1. Income Tax Ordinance, 2001
2. Customs Rules, 2001.
3. The Customs Act, 1969
4. The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules, 2006
5. Federal Excise Act, 2005
6. Sales Tax Act, 1990
7. The Federal Board of Revenue Act, 2007
8. The State Bank of Pakistan Act, 1956
9. Controller General of Accounts Ordinance, 2001
10. The Code of Civil Procedure, 1908
11. Civil Establishment Code (ESTA Code)
12. The Constitution of Islamic Republic of Pakistan, 1973
13. Tax Special Procedures Rules, 2007
14. Imports and Exports (Control) Act, 1950
15. Foreign Exchange Regulation Act, 1947.
16. Tracking and Monitoring of Cargo Rules, 2012
17. Imports and Exports (Control) Act, 1950
18. The Freedom of Information Ordinance, 2002
19. The Federal Board of Revenue Act, 2007
20. Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001
21. The Establishment of the Office of Federal Tax Ombudsman Ordinance
22. Afghanistan-Pakistan Transit Trade Agreement, 2010 (APTTA)
23. Pakistan-India Customs Cooperation Agreement, 2012
24. Pakistan and Iran Customs Cooperation Agreement, 2004
25. Control of Narcotic Substances Act, 1997
26. Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, 1979
27. Ordinance, 1979
28. The Drugs Act, 1976
29. The Pakistan Plant Quarantine Act, 1976

## Executive Summary

This report contains the findings of a legal gap analysis that has been conducted to assess the extent to which Pakistan's customs laws, regulations and practices comply with the standards and recommended practices contained in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended), generally referred to as the "Revised Kyoto Convention" or "RKC". Where a legislative, regulatory and/or practice compliance issue with respect to an RKC standard or recommended practice has been identified, the concerned compliance issue is described in the specific compliance assessment relating to the concerned standard or recommended practice. These individual compliance assessments constitute the major part of this document and are set forth in Parts II-XII of this report. Each such individual compliance assessment also provides, where appropriate, recommendations regarding the suggested measures that may be taken to address a compliance issue that has been identified in that assessment. Part XIII collects all recommendations made in the individual assessments into a "compliance roadmap" that proposes a rational sequencing of the suggested compliance measures. Part XIV provides the overall conclusions of the report.

The original International Convention on the Simplification and Harmonization of Customs procedures was adopted by the Customs Cooperation Council (better known as the World Customs Organization or "WCO") on 18 May 1973, and entered into force on 25 September 1974. It was then revised and updated in the late 1990's to better meet the evolving demands of governments and international trade. The WCO adopted the revised convention, the RKC, on June 26 1999, and it was also opened for signature on that date. The RKC went into effect on 3 February 2006, the date on which 40 of the Contracting Parties to the original convention (which included Pakistan) had deposited their instruments of accession to the revised convention with the WCO. As of 1 May 2013, the number of Contracting Parties that had acceded to the RKC had grown to 86.

The RKC comprises the text of the convention and 11 detailed Annexes, a mandatory "General Annex" and 10 optional "Specific Annexes", with each of the Specific Annexes being designated by a letter from A through K (however, to avoid confusion, there is no Specific Annex "I"). Pakistan deposited its instrument of accession to the RKC on 1 October 2004. In its instrument of accession Pakistan accepted all of the requirements of the General Annex, which are mandatory for all RKC Contracting Parties, and Pakistan also agreed to be bound by the first chapter of four of the 10 optional Specific Annexes: Specific Annexes A, B, C, and J. However, the legal gap analysis summarized in this report assesses the compliance of Pakistan's customs regime with the entirety of the RKC, and is not limited to the aspects currently binding on Pakistan.

The Annexes contain a substantial number of "standards", "transitional standards", and "recommended practices". For Pakistan there is no longer a distinction between "standards" and "transitional standards" because the transitional period of 60 months, which for Pakistan began on 3 February 2006 (the date the RKC came into effect), has expired, meaning that compliance with both categories of standards is now mandatory. Consequently, the compliance assessments in this report make no distinction between the two types of standards and often simply use the term "standards" to refer to both.

Throughout the RKC Annexes there are numerous standards that impose requirements on the "national legislation" of the Contracting Parties, i.e. these standards impose an obligation on a Contracting Party to ensure that its national legislation complies with the standard. As is made clear in the RKC's definition of "national legislation"<sup>1</sup> and in the Guidelines<sup>2</sup>, the concept of "national legislation" is a broad one; it encompasses any national legislation (including, laws, decrees, regulations, rules, official notifications, etc.) that affects customs matters even if such legislation is not

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<sup>1</sup> See Article 1 of the Convention.

<sup>2</sup> See Guidelines for Standard 1.2 of the General Annex.

“customs” legislation per se. Therefore, while this report generally focuses on the degree of RKC compliance of Pakistan’s customs legislation (the Customs Act, the Customs Rules, and the Special Regulatory Orders (SROs) and the Customs General Orders (CGOs) issued by the FBR), it also reviews provisions of other elements of Pakistan’s national legislation that affect customs matters and therefore constitute part of Pakistan’s customs regime.

In addition to a review of the referenced legislation, this report also is based on the results of discussions with Customs officials concerning the actual practice of Customs with respect to subject matter falling within the scope of the standards and recommended practices of the RKC. These discussions revealed that certain current Customs practices raise compliance issues under the RKC. These issues are discussed with specificity in the context of the individual standard/recommended practice compliance assessments contained throughout this report.

After assessing the degree to which Pakistan’s customs regime complies with a given standard or recommended practice, this report assigns a general “overall assessment” grade in accordance with the following table:

Table 1	
Compliant	The law and practice appear to be compliant; no compliance measures are recommended at this time.
Substantially Compliant	The law and practice, taken as a whole, appear to be largely - but not entirely – compliant; consequently, some specific adjustments are required to the national legislation or customs practice or both.
Partially Compliant	There are some aspects of the law and practice that are significantly in compliance; however, substantial adjustments are required to the national legislation or customs practice or both to achieve compliance.
Somewhat Compliant	There is one aspect or a few aspects of the law and practice that is/are in some degree of compliance; however, the law and practice, taken as a whole, is otherwise largely not in compliance and very substantial adjustments are required to both the national legislation and customs practice.
Non-Compliant	Neither the law nor the practice is in compliance.

In addition to the specific compliance recommendations made throughout this report and summarized in Part XIII, a general comment should be made about RKC-related customs training. During the research conducted for this gap analysis, inquiries were made to FBR/Customs with respect to the RKC training that has already been provided to Customs personnel. Specifically, written and telephonic requests were directed to the Directorate Generals for Training in Lahore, Karachi and Islamabad seeking information on any RKC-related training provided to customs personnel during the years 2008-2012. The requests specifically inquired into the identity of the instructors providing such training and the outlines for any training courses provided to Customs personnel. Two responses were received. One response was received from the DG for Training in Karachi relating to some very limited training that has been provided to Customs Officers holding BPS grades of 14-18 (operational officers and supervisors).<sup>3</sup> Another response was received from the DG for Training in Lahore revealing that no RKC training course took place during the concerned referenced five-year period. No response was received from the training center of the Directorate General in Islamabad.

From the responses received to the inquiries about RKC training, it is reasonable to conclude – in light of the large number of RKC standards that are currently mandatory for Pakistan – that little

<sup>3</sup> The response from Karachi was rather general and noted that a total of 253 officers (BPS 14-18) participated in three RKC-related training seminars the concerned five-year period. The three seminars were titled “Seminar on Kyoto Convention”, “WCO Framework of Standards” and “RKC, Customs Modernization and Trade Facilitation”, with each having duration of 1-3 days. The response from Karachi also indicated that the seminars reportedly covered the following subject areas: The Principles of RKC; The General Annex and the Guidelines; and The Specific Annexes and the Guidelines. No detailed information was provided with respect to identities or qualifications of the instructors or with respect to course outlines.

training on RKC-relevant matters has been provided to Customs personnel to date. However, we do not recommend that a more in-depth and detailed course on the RKC be provided to Customs personnel, as such a course would be of only indirect relevance to the day-to-day job performance of Customs personnel. Instead, as RKC-mandated changes in national legislation are adopted, training should be provided to Customs personnel on the nature of these legislative changes and on their proper implementation; and in such training information about the specifically relevant RKC standard (and the applicable Guidelines) would be useful in promoting proper implementation of the concerned change. In addition, as pointed out in this report, there are some instances where changes in national legislation are not required but the current practice of Customs is not in line with the requirements of existing legislation and/or the RKC. Training aimed at correcting these specific practices should be introduced, with the relevant legislative language and RKC standard(s) used to explain why the practice is being changed. Finally, we also note that the PACCS/WeBOC applications are quickly being implemented on a fast track basis throughout Pakistan, and this alone will require a comprehensive training program.

## RKC General Annex

### Introduction to the General Annex

Full compliance with the standards of the General Annex is mandatory for all Contracting parties. The General Annex comprises 10 chapters, each of which – other than Chapter 2 (the definitional section of the General Annex) – establishes standards with respect to the specific subject matter covered by that chapter. Unlike certain of the Specific Annexes, the General Annex contains no recommended practices. Table 2 summarizes the subject matter and number of standards covered by each chapter of the General Annex:

Table 2: General Annex					
Ch. No.	Subject	Standards	Transitional Standards <sup>4</sup>	Recommended Practices	Total
1	General Principles	3	-	-	3
2	Definitions	N/A	N/A	N/A	N/A
3	Clearance and Other Customs Formalities	36	9	-	45
4	Duties and Taxes	22	2	-	24
5	Security	7	-	-	7
6	Customs Control	9	1	-	10
7	Application of Information Technology	4	-	-	4
8	Relationship Between the Customs and Third Parties	7	-	-	7
9	Information, Decisions and Rulings Supplied by Customs	8	1	-	9
10	Appeals in Customs Matters	12	-	-	12
<b>Total</b>		<b>108</b>	<b>13</b>	<b>-</b>	<b>121</b>

Table 3 summarizes the general results of the gap analysis with respect to each chapter of the General Annex. The table summarizes the overall assessments made with respect to the standards of the General Annex, using the scoring system described in Table 1.

<sup>4</sup> As noted in the Executive Summary, for Pakistan there is no longer a distinction between “standards” and “transitional standards” because the transitional period has expired; therefore compliance with both categories of standards is now mandatory.

Table 3							
Ch. No.	Category	Compliant	Substantially Compliant	Partially Compliant	Somewhat Complaint	Non-Compliant	Total
1	Standards	0	1	2	-	-	3
	Transitional Standards	-	-	-	-	-	
2	Definitions						
3	Standards	22	3	6	-	5	36
	Transitional Standards	4	-	3	-	2	9
4	Standards	8	10	1	-	3	22
	Transitional Standards	-	1	-	-	1	2
5	Standards	2	-	3	-	2	7
	Transitional Standards	-	-	-	-	-	
6	Standards	2	-	5	-	2	9
	Transitional Standards	-	-	1	-	-	1
7	Standards	4	-	-	-	-	4
	Transitional Standards	-	-	-	-	-	
8	Standards	5	-	2	-	-	7
	Transitional Standards	-	-	-	-	-	
9	Standards	1	-	5	-	2	8
	Transitional Standards	-	-	1	-	-	1
10	Standards	5	7		-	-	12
	Transitional Standards	-	-	-	-	-	
<b>Total</b>		<b>53</b>	<b>22</b>	<b>29</b>	<b>-</b>	<b>17</b>	<b>121</b>

As indicated by Table 3, the gap analysis has determined that Pakistan's customs regime complies with approximately 43% of the standards of the General Annex. With respect to a standard that has been identified as presenting compliance issues, recommendations are made in the individual assessment for that standard with respect to measures that may be taken to bring the customs regime into compliance. Many of those recommendations relate to suggested changes in national legislation; and others relate to suggested modifications to customs practice, which will likely require some type of training for the concerned customs personnel. Several recommendations relate to the need for additional infrastructure or human or technology resources.

## Chapter 1: General Principles

1.1. Standard	The Definitions, Standards and Transitional Standards in this Annex shall apply to Customs procedures and practices specified in this Annex and, insofar as applicable, to procedures and practices in the Specific Annexes.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act;
- The Customs Rules

**Discussion:**

*Introductory note:* Standard 1.1 mandates that the definitions, standards and transitional standards<sup>5</sup> shall apply: (i) to the “procedures and practices” specified in the General Annex; and (ii) “insofar as applicable” [note that the standard does not use the word “practicable”], to “procedure and practices” specified in the Specific Annexes.

One aspect of Standard 1.1 presents an interpretative issue that should be addressed. The standard provides that “The Definitions in this Annex shall *apply* to Customs procedures and practices” (italics added). This wording is somewhat unusual as it seems to require that *definitions* are somehow to be *applied* to procedures and practices, a conceptually difficult result that does not seem to be the intent of Standard 1.1. The Guidelines for Standard 1.1 more clearly indicate that the definitions of the General Annex [which are set forth in in Chapter 2] are not – unlike the standards of the General Annex - actually to be *applied* to practices and procedures, but are to be used when the defined terms are used in the standards and recommended practices set forth in the Annexes.

*Law:* This report contains an assessment, on a standard-by-standard basis, of the extent to which Pakistan’s customs regime, including the Customs Act and Customs Rules, complies with the standards established by the RKC’s General Annex and ten Specific Annexes. Given the generally applicable nature of Standard 1.1, the degree to which customs legislation (the Customs Act, the Customs Rules, and other customs-specific instruments) comply with its requirements is assessed, whenever relevant, within the context of the individual standard compliance assessments that are contained throughout this report.

*Practice:* In addition, during our discussions with Customs officials certain compliance issues were identified with Customs practice that implicate Standard 1.1; again, these issues are discussed with specificity in the context of the individual standard compliance assessments contained in this report.

**Conclusion:** As indicated in the introduction to this report, on the whole Pakistan’s customs regime, meaning its legal framework and practices, is in partial compliance with the RKC and, consequently, with the general requirements of Standard 1.1. Specific compliance issues with respect to Standard 1.1 are identified throughout this report in the context of the compliance assessments for other standards whenever Standard 1.1 is also implicated.

**Recommendation:** Similarly, specific recommendations that relate to Standard 1.1 are provided throughout this report in the context of the compliance assessments for other standards whenever compliance with Standard 1.1 is also implicated. The recommendations made throughout this

<sup>5</sup> As noted in the Executive Summary, for Pakistan there is no longer a distinction between “standards” and “transitional standards” because the transitional period has expired, meaning that compliance with both categories is now mandatory. Consequently, this report makes no distinction between the two types of standards and uses the word “standards” to refer to both.

assessment are collected and organized in a compliance roadmap, which may be found in Part XIV of this report.

1.2. Standard	The conditions to be fulfilled and Customs formalities to be accomplished for procedures and practices in this Annex and in the Specific Annexes shall be specified in national legislation and shall be as simple as possible.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act;
- The Customs Rules

**Discussion:**

*Introductory note:* Standard 1.2 establishes basic requirements for the content of “national legislation”. Standard 1.2 is therefore not concerned with practice issues. And it must be noted that the concept of “national legislation” is a broad one; it encompasses any domestic legislation that affects customs matters even though such legislation is not customs legislation per se. However, this report is generally limited only to a review of the degree to which the Customs Act, the Customs Rules and – whenever applicable – General Orders of the FBR comply with the standards established by the annexes of the RKC.

Standard 1.2 requires that the conditions and formalities that are applicable to the practices and procedures specified in the RKC annexes must be set forth – in the simplest manner possible - in national legislation. The RKC Guidelines on this standard state:

*“Contracting Parties have to bring the Standards and Recommended Practices which they have accepted into force nationally. Their national legislation must therefore include at least the basic rules from the General Annex, together with detailed regulations for their implementation. These regulations will not necessarily be confined to Customs legislation and may apply to such instruments as official notifications, charters or ministerial decrees according to each Contracting Party’s administrative system.”*

**Law:** Like Standard 1.1, Standard 1.2 has general applicability. Therefore, as with Standard 1.1, the degree to which Pakistan’s customs legislation complies with its requirements is assessed, whenever relevant, within the context of the individual standard compliance assessments that are contained throughout this report.

**Practice:** Standard 1.2 is not concerned with practice issues.

**Conclusion:** As indicated in the introduction to this report, on the whole Pakistan’s customs regime is in partial compliance with the RKC and, consequently, with the general requirements of Standard 1.2. Specific compliance issues with respect to Standard 1.2 are identified throughout this report in the context of the compliance assessments for other standards whenever Standard 1.2 is also implicated.

**Recommendation:** Similarly, specific recommendations that relate to Standard 1.2 are provided throughout this report in the context of the compliance assessments for other standards whenever compliance with Standard 1.2 is also implicated. The recommendations made throughout this assessment are collected and organized in a compliance roadmap, which may be found in Part XIV of this report.

1.3 Standard	The Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.
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**Overall Assessment:** Substantially Compliant.

**Relevant Law:**

- [None]

**Discussion:**

This Standard requires Customs to both establish and to maintain formal consultative relationships with the trade for the purposes specified.

*Law:* Neither the Customs Act nor the Customs Rules contain any provisions that relate directly or indirectly to the establishment or maintenance of such consultative relationships with the trade.

*Practice:* Nevertheless, during interviews with the resource persons specified below, it was asserted that FBR/Customs have established advisory committees comprising representatives of the trade and Customs as well as various subject matter experts. These committees reportedly meet periodically for the purpose of discussing Customs operations, the simplification of procedures, reviewing international best practices, strengthening mutual co-operation, and identifying methods for facilitating trade without compromising the collection of duties and taxes. Such advisory committees were reported to have been established in each of the 15 Model Customs Collectorates ("MCCs") in Pakistan, including the five MCCs in Karachi (MCC Appraisalment, MCC PACCS, MCC Exports, MCC Port Qasim, and MCC Preventive) and the two MCC's in Lahore.

**Resource Persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi.
- Mr. Zahid Baig. Additional Collector of Customs, MCC, Islamabad.
- Mr. Abdul Waheed Khan, Former Collector of Customs and Consultant (Customs), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC Appraisalment, Karachi.

**Conclusion:** Based on the information received during the interviews of the above-named resource persons, we have concluded that it is likely that Pakistan is in substantial compliance with the standard. However, we note that we have as yet been unable to obtain any formal documentation with respect to either the establishment or operation of these advisory committees.

**Recommendation:** To better assess the degree of compliance with the standard, it is recommended that the documents establishing the referenced advisory committees be made publicly available, as should the meeting calendars and agendas for each advisory committee. We also believe that the Customs Rules should be amended to include new provisions governing the establishment and maintenance of the formal consultative relationships required by Standard 1.3.

## Chapter 2: Definitions

Chapter 2 of the General Annex does not contain any explicit standards or recommended practices. Instead, it sets forth a general list of terms and associated definitions that are to be used when interpreting not just the General Annex, but all of the Specific Annexes as well.<sup>6</sup>

**Overall Assessment:** Not Applicable

**Relevant Law:**

- The Customs Act;
- The Customs Rules

**Discussion:**

*Introductory Note:* Chapter 2 of the General Annex imposes no obligations on a Contracting Party. Furthermore, there are no Guidelines for Chapter 2. Chapter 2 only sets forth a list of defined terms that must be used when interpreting the standards and recommended practices set forth in the Annexes. In addition, Standard 1.1 provides that “The Definitions in this Annex shall apply to Customs procedures and practices specified in this Annex and, insofar as applicable, to procedures and practices in the Specific Annexes.” See the Discussion of Standard 1.1 above.

Although Standard 1.1 and Chapter 2 do not explicitly require a Contracting Party to adopt into its national legislation the terms and assigned meanings specified in Chapter 2 of the General Annex, we note that it will be difficult for a Pakistan comply with its obligations under the RKC if certain of the basic *customs-specific* terms found in Chapter 2 are not used in Pakistan’s customs legislation, or if such terms are in fact used but have assigned meanings that differ materially from the assigned meaning found in Chapter 2.

However, with regard to many of the other terms defined in Chapter 2, the question is not whether Pakistan’s customs legislation uses the same terminology. The question is whether – when reviewing compliance with a specific standard that uses a term defined in Chapter 2 - Pakistan’s customs legislation and practice, as a matter of substance, complies with requirement of such standard, regardless as to whether Pakistan’s customs legislation and practice uses the same terminology.

For example, the term “omission” is defined in Chapter 2 to mean the failure by Customs to discharge a legal duty imposed on it by customs legislation. However, the terms “omission” and “omit” (used in the sense of failing to do something that should or was required to have been done) appear very rarely in the Customs Act and the Customs Rules, and even then such terms are only used with this meaning when referring to a failure by a private person, not by the Customs. It would therefore make little sense to copy the definition of the term “omission” from Chapter 2 and to paste it in the Customs Act or Customs Rules. And this is in any case unnecessary because the Customs Act and Customs Rules simply use other terms and phrases to convey the same meaning as the term “omission” as defined in Chapter 2.

In addition, Chapter 2 contains a number of terms in general use that have an accepted legal meaning in Pakistan. So it is not necessary for customs legislation to specifically set forth definitions of these terms that match up precisely to what is provided in Chapter 2; e.g., “appeal”, “decision” “due date”, “person”, “security” and “third party”. The absence of customs-specific definitions for these terms only means that the concerned term – when it appears in Pakistan’s customs legislation - will carry the otherwise generally accepted legal meaning. And it is our opinion that the generally accepted legal meaning of the aforementioned terms in Pakistan is consistent with the meaning

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<sup>6</sup> In addition, each Specific Annex contains a special set of defined terms, the use of which is limited to that Specific Annex.

assigned thereto by Chapter 2. So the absence of a specific definition of such a term in Pakistan's customs legislation raises no compliance issues.

*Law:* Given that the terms and definitions of Chapter 2 are to be used when interpreting the individual standards that use such terms, specific terminological/definitional/interpretational issues in the law that are relevant to Chapter 2 are identified throughout this report in the context of the compliance assessments done with respect to the individual substantive standards whenever appropriate.

*Practice:* Chapter 2 is not directly concerned with practice issues.

**Conclusion:** Because it contains no obligations, assigning a compliance rating with respect to Chapter 2, a definitional section, would be inappropriate. However, we note that there are certain aspects of the customs-specific terminology of Pakistan's customs regime that are not consistent with similar terminology used in the RKC and international practice. We also note that there are some terms of art used in the RKC that are not used in Pakistan's customs legislation.

Specific terminological/definitional/interpretational issues that are relevant to Chapter 2 are identified throughout this report in the context of the compliance assessments done with respect to the individual substantive standards.

**Recommendation:** Similarly, specific recommendations that relate to Chapter 2's terms and definitions are provided throughout this report in the context of the compliance assessments for other standards whenever appropriate. The recommendations made throughout this assessment are collected and organized in a compliance roadmap, which may be found in Part XIV of this report.

*Cautionary Note: The introduction of a new defined term into an existing piece of legislation or the introduction of a definition or an altered definition for a term already used in legislation must be done with great care. There may be no provision in the legislation that uses a newly introduced defined term, making the exercise at best meaningless. Or, if a term is already used in the legislation, and a definition or altered definition is introduced for that term, the new or altered definition may well affect in unintended ways the meaning of the provisions within which the term occurs.*

## Chapter 3: Clearance and Other Customs Formalities

3.1. Standard	The Customs shall designate the Customs offices at which goods may be produced or cleared. In determining the competence and location of these offices and their hours of business, the factors to be taken into account shall include in particular the requirements of the trade.
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**Overall Assessment:** Compliant

### Relevant Law:

- The Customs Act; Sections 9, 10 and 65-67.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001).
- Notification No. S.R.O. 100(I)/83 dated 12-02-1983
- Notification No. S.R.O. 101(I)/83 dated 12-02-1983
- Notification No. S.R.O. 102(I)/83 dated 12-02-1983
- Notification No. S.R.O. 103(I)/83 dated 12-02-1983
- Notification No. S.R.O. 104(I)/83 dated 12-02-1983
- Notification No. S.R.O. 105(I)/83 dated 12-02-1983
- Notification No. S.R.O. 324(I)/2011 dated 25-04-2011

### Discussion:

*Introductory Note:* The standard has two elements. First, it requires Customs to designate the Customs Offices at which goods may be produced or cleared. Second, when establishing the location, competence and hours of operation of these offices, the standard requires that Customs give specific consideration to the requirements of the trade.

*Law:* It should first be noted that the standard does not impose any requirements on “national legislation”, but only on Customs’ practice. Nevertheless, certain provisions of the Customs Act are relevant to the standard:

*Section 9 authorizes the FBR (1) to designate customs ports, customs airports and land customs stations “for the clearance of goods or any class of goods imported or to be exported”, (2) to designate ports that may carry on coastal trade, and (3) to designate customs houses.*

*Section 10 authorizes the FBR to specify the limits of any “customs station” (“customs station” is broadly defined to include any customs port, customs airport or land customs-station) and to approve the places in a customs station where goods, or any class of goods may be loaded or unloaded; and*

*Sections 65-67 authorize FBR to set the hours of operation and competence of customs stations.*

The FBR has exercised its authority under these sections by issuing notifications establishing the referenced customs facilities. The following table lists the most significant of such notifications.

**Major Notifications Designating Customs ports**

S.No	SRO No & Date	Name of Customs Ports
V	Notification SRO No 100(I)/83 dt 12-2-83	Karachi, Jiwani, Gwador, Pasni Ormara, Gaddani and Port Muhammad Bin Qasim Karachi.
VI	Notification SRO No 101(I)/83 dt 12-2-83	The civil Airport Karachi the Sher-e-Shah Faisal Airbase, Karachi, the Masroor Airbase MauriPur, Karachi, the Nawabshah Airport, Nawabshah, the Quetta Airport, Quetta, the Jiwani Airport, Jiwani, Gwador Airport, Gwador, the Pasni Airport, Pasni, the Peshawar Airport, Peshawar, the Peshawar Airbase Peshawar, the Islamabad Airport Rawalpindi, the Allama Iqbal International Airport Lahore, the Sargodha Airbase, Sargodha, the Rafiqui Airbase Shorkot, the Multan Airport Multan, the Turbat Airport the Hyderabad Airport, Hyderabad, the Faisalabad Airport, Faisalabad, the Sukkur Airport, Sukkur, the Zhob Airprt, Zhob, the Kamra Airbase Kamra, the Moenjodara Airport Moenjodara, and the Faisalabad Airport.
VII	Notification SRO No 102(I)/83 dt 12-2-83	Land Customs Stations, Chhor, Gadro, Khokhropar, Hyderabad Railway Station, Rohri Railway Station, Ghokri Railway station, Mirpur Mathelo Railway Station, Wagha Lahore Railway station, Kotlakhpat Railway Station, Suntsar, Gabd, Qilaladhast, Dalbandin, Nok Kundi, Qila Saifullaha Gulaistan, Taftan, Shaighalu, Sust & Dhi, Jiwani, Taftan, Zhob, Anam Bostan, Qamar-u-din, (district zhob) Rideeg (District Mand) Chidgi (district Panjgoor) Gabd and Kalato, Katagar, Gaznali, Peshawar Railway Cantt, City Railway station Peshawar, Michini Bridge, Shah Alam Bridge, Nagoman Bridge Adezai Bridge, Shabqadar, Bakha Khel, Ghulam Khan, Shahi (Uperdir) Sher Garh, Nawa Pass (Bajaur Agency) Khapakh Mohmand Agency, Terimengal (Kurram Agency) Kharlachi (Kurram Agency), Shaheedano Dand (Kurram Agency), Lawara Boya Datta(N. Waziristan Agency), Angoor Adda(S. Waziristan Agency), Khand-Narrai (S. Waziristan Agency), Arandu Pass and Burki (Kurram Agency)
VII	Notification SRO No 103 (I)/83 dt 12-2-83	Customs Ports Shah-Bunder Karachi, Sokhi Bunder Jiwani, Ibrahim Hydry Gwador, Ketu Bunder Pasni, Sonmiani Ormara, Port Muhammad Bin Qasim
VIII	Notification SRO No 104(I)/83 dt 12-2-83	Customs Ports Shah-Bunder Karachi, Sokhi Bunder Jiwani, Ibrahim Hydry Gwador, Ketu Bunder Pasni, Sonmiani Ormara, Port Muhammad Bin Qasim
IX	Notification SRO No 104(I)/83 dt 12-2-83	Customs Houses West: Karachi Port Trust Office flats and the adjoining open space of M.I. Yard. North: KPT Badminton Court and the adjoining open space of M.I Yard. East: Eduljee Dinshaw Road South: Karachi Port Trust building.
X	Notification SRO No 105(I)/83 dt 12-2-83	Declaration of limits the Dangerous Petroleum Huts, Keamari, Block "A", Compartments A1,A2,and A3
XII	Notification SRO. No 324(I)2011 dt 25.04.2011	Declaration of Custom House Jamrud Road, School Road, Peshawar

In addition to the above, under Section 65 of the Customs Act (which authorizes the FBR to establish the working hours of customs stations) the FBR has, through Notification Number 113(I)/83, dated 12-02-1983, which is amended from time to time, specified the working hours for Customs at the various customs stations.

Where the Customs Computerized System is in operation, loading and unloading activity may be allowed by the Collector of Customs on a 24/7 basis. This was made possible by a proviso that was added to Section 65 in 2006, which reads "*Provided that where the Customs Computerized System is*

*in operation, all loading and discharge may be allowed by the Collector of Customs round the clock and on all days.”*

As previously noted, the standard does not impose any specific obligation with respect to the content of national legislation. Nevertheless, the above discussion demonstrates that FBR/Customs has the legal authority to designate the location, competence and hours of operations of customs offices, and has exercised that authority as required by the standard.

The more difficult question relates to the second part of the standard, which requires Customs to give specific consideration to the “requirements of the trade” when determining the location, competence and hours of operation of customs offices. There is nothing specifically in the law or the rules imposing such a requirement, but the standard does not require that there must be. Therefore, an assessment of FBR/Customs’ practice in this regard must be made to determine whether the standard is being complied with.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice is in accordance with the standard; i.e. these individuals have maintained that - when designating the location, competence and working hours of customs offices – FBR/Customs takes into account the requirements of trade. It was pointed out that the number of Customs Collectorates has increased from time to time to accommodate the increased volume of trade as proposed by importers and exporters. For example, the Model Customs Collectorates of Faisalabad, Multan and Sambrial (Sialkot) were reportedly established to specifically handle the expanding volume of exports/ imports in these regions. Similarly, MCC Gwadar was recently established in response to the rising volume of cargo passing through the Gwadar sea-port.

**Resource persons:**

- Mr. Nasir Chandna, Customs House Agent, Karachi.
- Mr. Aamir Altaf, Customs House Agent, Karachi, dealing with Afghan Transit Trade.
- Mr. Sarfaraz Warraich, Collector of Customs MCC Sambrial, Sialkot
- Mr. Fazal Yazdani, Collector of Customs, (Preventive) Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.2. Standard	At the request of the person concerned and for reasons deemed valid by the Customs, the latter shall, subject to the availability of resources, perform the functions laid down for the purposes of a Customs procedure and practice outside the designated hours of business or away from Customs offices. Any expenses chargeable by the Customs shall be limited to the approximate cost of the services rendered.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 65 and 67
- The Finance Act
- Customs Notification Number SRO 340(I)/2009 dated 16-04-2009 (Fee on seals to be used for Pakistan Customs Container Security System).
- Customs Notification Number SRO 1053(I)/2011 dated 16-11-2011 (Service charges for filing Goods declaration under PACCS).

**Discussion:**

*Introductory Note:* This Standard requires that when a person makes a request for reasons deemed valid by Customs, Customs must, subject to the availability of resources, perform Customs functions outside the designated hours of business or away from the premises of a Customs office. The standard also requires that any expenses chargeable by the Customs for performing such functions shall be limited to the approximate cost of the services rendered.

*Law:* Section 65 of the Customs Act only permits the loading or unloading of goods at such times as the Board may notify. Where the Customs Computerized System is in operation, loading and unloading activity at the customs station may be allowed by the Collector of Customs on a 24/7 basis. However, where the Customs Computerized System is not in place, there is no exemption from the standard hours of operation notified under Section 65. So the law is at best only in partial compliance with the “outside the designated hours” element of the standard.

Section 66 of the Customs Act only permits the loading por unloading of goods at any place that has not been previously approved by the FBR in an official notification. However, Section 67 provides a limited exemption from the rule of Section 66 by authorizing the *FBR*, through an official notification, to give permission “for goods to be loaded *at any customs station* from any place not duly appointed for loading and without the presence or authority of an officer of customs.” The exemption of Section 67, however, does not have nearly the scope equired by the standard, as it does not authorize Customs functions to be performed away from a customs station or any place that has not been previously notified by the FBR. The law is therefore only in partial compliance with the standard.

In addition, it should be noted that if Customs were to be authorized to perform Customs functions outside of the designated hours and away from designated customs offices, as required by the standard, the associated service fees would have to be notified pursuant to Section 18D of the Customs Act:

**18D. Levy of fee and service charges.-** *The Federal Government may, by notification in the official Gazette, subject to such conditions, limitations or restrictions as it may deem fit to impose, levy fee and service charges for examination, scanning, inspections, sealing and de sealing, valuation check or in respect of any other service or control mechanism provided by any formation under the control of the Board, including ventures of public-private partnership, at such rates as may be specified in the notification.*

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law, but there have been exceptions reported. It has been asserted that when the competent authority is satisfied that Customs functions relating to goods clearance may be performed outside the designated place for imports, exports and passenger clearance, this is allowed as an exceptional case and under specific conditions to ensure revenue security, integrity of regulations, maintenance of Customs control and the payment of expenses to Customs. For example, imported heavy machinery for the “Tarbela Joint Venture” (TJV) was reportedly cleared at the Tarbela Dam away from the designated customs station.

**Resource Persons:**

- Dr. Wasif Ali Memon, Collector of Customs, MCC Exports, Karachi.
- Dr. Nadeem Memon, Additional Collector of Customs, MCC, Karachi.
- Mr. Fazal Yazdani Khan, Collector of Customs, Preventive, MCC, Lahore

**Conclusion:** Based on the above research, it appears that the law and practice are only partially compliant with the standard.

**Recommendations:** Section 67 of the Customs Act should be re-drafted to allow the concerned Collector of Customs to authorize, on a case-by-case basis, the performance of Customs functions outside the designated hours of operation and away from the customs station. In addition, a schedule of fees for these off-site and/or off-hours services should be developed and issued under Section 18D of the Act. Reference should also be made to Chapter II of the preventive manual, “Merchant Overtime Fee payable to the customs staff, if any.”

## 3.3. Standard

Where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.

### Overall Assessment: Compliant

#### Relevant Law:

- The Afghan Pakistan Transit Trade Agreement, (APTTA)
- The Pakistan and India Customs Cooperation Agreement
- The Pakistan and Iran Customs Cooperation Agreement

#### Discussion:

*Law:* This Standard enunciates that where Customs offices are located at a common border crossing, the Customs administrations concerned shall correlate the business hours and the competence of those offices.

This is a matter which stands settled at inter-governmental level between Pakistan and each of its four neighbours i.e. Afghanistan, Iran, China and India. In case of India it is provided for within the Pakistan and India Customs Cooperation Agreement.

In case of China, Pakistan has formal understanding in relation to border trade by Karakorum Highway. In case of Afghanistan, the Afghanistan Pakistan Transit trade Agreement provides for correlation of business hours at common border stations of Chaman and Torkham and for making such arrangement at Ghulam Khan in due course.

Pakistan has also signed in 2004, a 'Customs Cooperation Agreement' with Iran within the framework of which the border customs operations are being coordinated at Kohe Taftan-Mir Java.

The existing practice is that Pakistan Customs and their counterparts in each of the neighboring countries regularly coordinate with each other regarding their respective customs operations and normally follow uniform/coordinated business hours. Pakistan has also initiated negotiations with India on joint border operations at Wagha border. With Afghanistan, at Torkham and Chaman border stations, arrangements are detailed out in APTTA. Article 34 of section X *ibid* provides for establishment of 'Afghanistan-Pakistan Transit Trade Coordination Authority'. On its coming into existence, all matters related to transit trade will be looked after and coordinated by the said Authority. It is common knowledge that the customs offices operate at Torkham and Chaman with complete understanding and coordination.

In case of Sust/Tashgurkand borders, due to geographical location and difficult terrain, joint border operations are practically not possible. Nonetheless, the two sides operate in close coordination. In case of Iran as well, the two customs administrations have developed close coordination and operate in harmony and understanding.

In postings of officers, due consideration is given to competence of offices at border customs stations i.e. officers of same levels/powers are appointed to head the office on both sides of the border.

Pakistan has thus developed formal or semi-formal understandings with each of the four neighboring countries namely China, Afghanistan, Iran and India on co-relating business hours and competence of offices at each land border Customs stations.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Fazal Yazdani Khan, Collector of Customs, (Preventive), Lahore.
- Mr. Ibrahim Vighio, Collector of Customs, Quetta.
- Mr. M. Zubair Shah, Deputy Collector of Customs, Torkham/Peshawar.
- Dr. Saeed Jadoon, Additional Collector of Customs, Torkham/Peshawar

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the standard.

**Recommendations:**

## 3.4. Transitional Standard

At common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.

### Overall Assessment: Non-Compliant

#### Relevant Law:

- The Afghan Pakistan Transit Trade Agreement, (APTTA).
- Memorandum of Understanding (MoU) between Pakistan and Iran, 2004

#### Discussion:

*Law:* This Standard requires that at common border crossings, the Customs administrations concerned shall, whenever possible, operate joint controls.

For joint border operations Pakistan has already made initiatives with India within the framework of the Pakistan-India Customs Cooperation Agreement. Pakistan has also formal understandings with China in relation to border operations through Karakoram Highway (KKH). In case of Afghanistan, Afghan-Pakistan Transit Trade Agreement provides a window for close coordination and deliberations on facilitating all processes of goods clearance and transportation. In case of Iran as well there is common understanding on border operations and therefore, possibilities for joint operations can be explored.

Pakistan and Iran signed trade agreements, MoUs, in March, 2004, which, inter alia, provides for customs co-operation and transit trade.

In July 2012, Pakistan and Iran are exploring joint activities in exports and investment under a five-year strategic program. The program inter alia, provides to strengthen trade relations, devise a strategy to exercise uniform customs procedures to the extent possible in accordance with bilateral agreements based on mutual assistance for proper application of customs laws and for prevention, investigation and combating of customs offences between the two countries.

Basic understanding thus exists to achieve the goal of operating joint controls at different border crossings. In this perspective, there are good prospects to explore the potential for development of operating joint controls with India at Wagha (Lahore-Amritsar), Ganda Singh Wala (Kasur-Sutlej Bridge) and Khokropar Muna Bao (Sindh-Rajputhana), with Afghanistan (Torkham), (Chaman-Vesh) and with Iran at (Koh-e-Taftan).

Passenger traffic and movement of goods is bound to grow in volume and quantum as time passes. As the economies of Pakistan and its neighbors are likely to expand therefore, trade volume will also grow. At the same time passenger movement will pick up. All of them will require new approach for expeditious processing to avoid delay and congestion at border crossings.

Joint controls at common border station can be used as an effective tool to avoid/ address these problems. Additionally, joint controls may also help in enforcement operations in matters of possible illegal movement of certain banned and prohibited substances/goods such as narcotics, arms and ammunitions etc.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mrs. Rubina Athar, Joint Secretary, Ministry of Commerce, Islamabad.
- Mr. Fazal Yazdani Khan, Collector of Customs, Lahore

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the standard.

**Recommendations:**

- FBR may initiate consultations with Ministry of Commerce with a view to achieving early break-through in making India and other neighbors to agree to operate joint controls at common borders within the framework of Afghanistan and Pakistan Transit Trade Agreement.
- FBR/ Customs may, through Ministry of Commerce, deliberate with Afghan, Iranian and Chinese authorities to establish joint controls for processing transit trade as a measure of trade facilitation measure for Transit and bilateral Trade.

3.5. Transitional Standard	Where the Customs intends to establish a new Customs office or to convert an existing one at a common border crossing, they shall, wherever possible, co-operate with the neighboring Customs to establish a juxtaposed Customs office to facilitate joint controls.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Afghan Pakistan Transit Trade Agreement (APTTA)
- The Pakistan Iran Customs Cooperation Agreement

**Discussion:**

*Law:* Discussion under Standard 3.4, equally applies in this Standard. Indeed it is important that whenever Customs intends to establish a new office or to convert an existing one at a common border crossing, they shall cooperate with neighboring Customs. In this regard, the need for mutual understanding with neighboring countries for joint operations, sharing of information and seeking avenues of mutual cooperation cannot be over emphasized.

Normally all such negotiations at country level are led by Ministry of Commerce (MoC), Government of Pakistan, but Customs are always part of such negotiations.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. Fazal Yazdani, Collector of Customs, (Preventive) Lahore.
- Mr. Ibrahim Vigio, Collector of Customs, Quetta

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the standard.

**Recommendation:** Whenever joint controls are established, Pakistan Customs may as far as possible, provide for operating its border offices, juxtaposed to the offices of the neighboring Customs, to facilitate joint controls. This will however, require efforts by the MoC in the Joint Economic Commissions and in some cases by the Economic Affairs Division.

3.6. Standard	National legislation shall specify the conditions under which a person is entitled to act as declarant.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Section 79, 81, 82, 83, 104, 108, 131 and 139.

**Discussion:**

*Law:* The conditions or requirements specified in the Customs Act under which a person is entitled to act as declarant are-

- Under Section 79, 82, 83, 104, 131 and 139 of the Act, an owner of the goods
- Under Section 81 of the Act, an importer of the goods
- Under Section 104 of the Act, a 'manufacturer-cum-exporter' duly authorized by the owner

The definition of declarant given in this Standard is more comprehensive and is wider than the words used in the above referred sections of the Act. It is recommended that in the Act, the term "declarant" be defined as indicated in 'Recommendations' below. Moreover, once this Recommendation is accepted, it may be examined whether amendments in Sections 79, 82, 83, 101, 108 and 131 of the Act will be required. Appropriate changes are recommended in the relevant sections in line with the change, which has been suggested, by extending definition of "a person" entitled to file a GD, while commenting on Standard 3.7.

In actual practice, Customs accept goods declaration filed only by the person in whose name Bill of lading, Letter of Credit or proforma Invoice is issued.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC Peshawar.
- Mr. Faroque Tehsin, Superintendent, AFU, MCC (Preventive) Lahore.
- Mr. M. Arif Moton, Advocate and former Member (Judicial), Customs Appellate Tribunal, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is substantially in compliance with the standard.

**Recommendations:**

- A definition of expression 'declarant' may be added in the Customs Act, to provide that an owner, importer, exporter or their duly authorized agent or a legally entitled person (e.g. a decree holder from a Court of law), shall be competent to file Goods declaration for clearance of goods.
- Consequential amendments may also be made in Sections 79, 81, 82, 83, 104, 108, 131 and 139 of the Act and in the Customs Rules. For instance, in Section 79 of the Act, for declarant the term 'owner' has been used. After insertion of the definition of 'declarant', the word owner has to be substituted. Likewise, in Sections 81 and 82, the expressions 'importer' and 'owner' have respectively been used. After the addition of definition of 'declarant', these two provisions will also require appropriate amendments.

3.7. Standard	Any person having the right to dispose of the goods shall be entitled to act as declarant.
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**Overall Assessment:** Partially Compliant

**Relevant Laws:**

- The Customs Act; Sections 79, 104, 131, 139, 144 and 208

**Discussion:**

*Law:* The provisions of the Customs Act as contained in Sections 79, 104, 131, read with 139, 144 and 208 thereof specify the condition of having ownership of goods to qualify a person to act as declarant. He, being owner of the goods, has the right to dispose of the goods. The existing provisions of the Customs Act are thus, in substance, compliant with the Standard. However, in order to make the language of the existing provisions of the Act in compliance with this Standard, it is appropriate that a new definition of declarant may be added in the Act, as proposed while discussing Standard 3.6.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC, Peshawar.
- Mr. Farooque Tehsin, Superintendent, AFU, MCC (Preventive), Lahore.
- Mr. M. Arif Moton, Advocate, Karachi

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the standard.

**Recommendations:**

- A definition of expression 'declarant' may be added in the Customs Act, to provide that an owner, importer, exporter or their agent or a legally entitled person (e.g. a decree holder from the court of law), shall be competent to file Goods declaration for clearance of goods.
- Consequential amendments may also be made in Sections 79, 81, 82, 83, 104, 108, 131 and 139 of the Act and in the Customs Rules. For instance, in Section 79 of the Act, for declarant the term 'owner' has been used. After insertion of the definition of 'declarant', the word owner has to be substituted. Likewise, in Sections 81 and 82, the expressions 'importer' and 'owner' have respectively been used. After the addition of definition of 'declarant', these two provisions will also require appropriate amendments.

3.8. Standard	The declarant shall be held responsible to the Customs for the accuracy of the particulars given in the Goods declaration and the payment of the duties and taxes.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Sections 72-A, 79, 131, 155-E, 156, 207 and 208.
- The Customs Rules

**Discussion:**

**Law:** Section 79(1) (a) of the Customs Act provides that the owner shall give correct and true declaration to the Customs, whereas, Section 79(1) (b) requires that the declarant shall pay duties and taxes in this regard. The relevant provision of the section is reproduced as under:

**79.(1) Declaration and assessment for home consumption or warehousing:** The owner of any imported goods shall make entry of such goods for home consumption or warehousing or for any other approved purposes, within fifteen days of the arrival of the goods, by;

- Filing a true declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribe ; and
- Assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user of the Customs Computerized System:

In similar manner, an exporter is required under Section 131 of the Act to make correct and true declaration of goods and of draw-back claim. Likewise, Section 104 thereof requires the owner of warehoused goods to make true and correct declaration of such goods and to pay leviable duty and taxes. A person making false or incorrect declaration shall entail liabilities under the provisions of Section 156 of the Act.

**Practice:** According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Amir Zaman, Inspector of customs Rebate Section (formerly examiner at Torkham for 3 years and inspector in law branch) Customs House, MCC, Peshawar.
- Mr. M. Arif Moton, Advocate, Karachi
- Mr. Faroque Tehsin, Superintendent, AFU, MCC (Preventive), Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.9. Standard	Before lodging the Goods declaration the declarant shall be allowed, under such conditions as may be laid down by the Customs : (a) To inspect the goods; and (b) To draw samples
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**Overall Assessment:** Partially Compliant.

**Relevant Law:**

- The Customs Act; Sections 79, 198, 199 and 200

**Discussion:**

*Law:* The first proviso to Sub-Section (1) of Section 79 of the Customs Act provides that an owner of imported used goods may make a request to the Customs for examination of goods before filing of Goods declaration, on the grounds that he was unable, for want of full information, to make a correct and complete declaration of such goods. A Customs officer, if satisfied, may permit the owner to examine the goods and to file a Goods declaration if the person satisfies the Customs authority that such inspection/sample is essential for his making a correct declaration.

The law however, does not permit inspection of goods other than “used goods” and of taking sample of any imported goods before filing of a Goods declaration. Contrary thereto, sub-Section (1) of Section 199 of the Act provides that an appropriate officer of customs may take samples of the subject goods in presence of owner or his agent.

Since, the declarant has a substantive stake in the goods and the goods are under Customs control, there is no harm in allowing a declarant by way of facilitation to inspect goods or draw samples thereof before filing of formal Goods declaration under such conditions as FBR/Customs may impose.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore.
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the standard.

**Recommendations:**

- Section 79 of the Act may be modified to allow the declarant to inspect the goods and to take samples of goods before filing of Goods declaration.
- Provisions of Section 199 of the Act may also be modified to align the same to those of modified Section 79, as recommended.
- The ‘Import Examination Manual’, Edition 1995, MCC (Appraisement), Customs House, Karachi, may also be amended accordingly. For instance, the said Manual right from the beginning speaks of ‘Bill of Entry’, which has to be substituted by the words “Goods Declaration”. The Manual also contains responsibilities of the officers such as ‘Examiner’, ‘Principal Appraiser’ and ‘Appraiser’ with reference to examination of goods required after a Bill of Entry has been filed. After the proposed amendment, these provisions have to be modified to include a situation when a Goods declaration has not yet been filed.

3.10. Standard	The Customs shall not require a separate Goods declaration in respect of samples allowed to be drawn under Customs supervision, provided that such samples are included in the Goods declaration concerning the relevant consignment.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 131 and 104

**Discussion:**

*Law:* The Customs Act does not provide for filing of any separate Goods Declaration in respect of samples to be drawn for testing of goods by the officer of customs. A single GD is filed under Sections 79 or 131 or 104 of the Act. For chartered vessels of liquid or dry cargo, samples may be drawn for confirming specifications. Even in these cases, separate Goods declaration for samples is not required to be filed.

Once the recommended modifications are made in the law, as proposed under Standard 3.9, for samples drawn before Goods declaration (GD) by the declarant, no separate GD will be required under the existing provisions of the Act.

In practice filing of separate GD is not asked for when samples are drawn by the appropriate officer. He, however, endorses this fact on the GD filed under Sections 79 or 131, or 104 of the Act by the declarant.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the standard.

**Recommendations:**

3.11. Standard	<p>The contents of the Goods declaration shall be prescribed by the Customs. The paper format of the Goods declaration shall conform to the UN-layout key. For automated Customs clearance processes, the format of the electronically lodged Goods declaration shall be based on international standards for electronic information exchange as prescribed in the Customs Co-operation Council Recommendations on information technology.</p>
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 223.
- Customs General Order 12 of 2002 dated 15-06-2002.

**Discussion:**

*Law:* The existing Goods Declaration (GD) format was originally introduced on July 01, 1996. It was revised by CGO 12/2002 dated 15-06-2002. The existing GD format is in accordance with the UN layout key. Likewise, the format of the electronically lodged GD is based on international standards for electronic information exchange, as prescribed in the Customs Co-operation Council's recommendations on 'Information Technology' and is in vogue since 01-07-2004. Its contents appear on one A4 size page, in 66 entries, which are simple and convenient to fill. Copy attached in Annexes to this Report. For facility of reference, the said entries are as below:

## GOODS DECLARATION, GD-I

Custom File No.

[ ] BILL OF ENTRY

[X] BILL OF EXPORT

[ ] BAGGAGE DECLARATION

[ ] TRANSSHIPMENT PERMIT

1. EXPORTER'S/CONSIGNOR'S NAME AND ADDRESS		2. DECLARATION TYPE SB		3. VALUATION METHOD 7		4. PREVIOUS REF	
10. IMPORTER'S/CONSIGNEE'S/PASSENGER NAME & ADDRESS AAA AAA		5. PAGE 1 OF 2		6. CUSTOM OFFICE KAFE		7. BANK CODE 10 1	
14. NTN		15. STR. No / PASSPORT NO & DATE		8. IGM/EGM NO & DT 0-00-00-0000		INDEX 0	
18. DOCUMENTS ATTACHED <input type="checkbox"/> INV <input type="checkbox"/> B/G <input type="checkbox"/> BL/AWB/ <input type="checkbox"/> IT EXMP <input type="checkbox"/> CO <input type="checkbox"/> <input type="checkbox"/> PL <input type="checkbox"/>		E-Form No ASD 0000012		Date 03/06/2008		Value 1	
22. VESSEL MODE OF TRANSPORT		23. BL. AWL. CON. NO & DATE 12344		24. EXCHANGE RATE 0.00000		17. TRANSACTION TYPE Related	
27. PORT OF DISCHARGE KABUL		28. PLACE OF DELIVERY AAAA		26. PAYMENT TERMS COLLECTION OF DOCUMENTARY PAYMENT (CME)		20. COUNTRY OF DESTINATION AFGHANISTAN	
31. NUMBER OF PACKAGES 1		32. TYPE OF PACKAGE BALE		33. GR OSS WT MT 10		34. Volume M3 0.0000	
35. GENERAL DESCRIPTION OF GOODS TEST		36. IN THE CASE OF DANGEROUS GOODS INDICATE HAZARD CLASS/DIV-FLASH POINT		37. NET WT MT 1		30. MARKS/ CONTAINER NOS. TEST	
37. ITEM NO 1		38. QUANTITY (Q) UNIT TYPE NO		38(b). NO OF UNITS 1		39. CO CODE 586	
42. ITEM DESCRIPTION OF GOODS TEST		40. SRO NO		41. HS Code 0101.1000		46. LEVY	
43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed		47. RATE	
1		1		0.00000		48. SUM PAYABLE (PKR)	
37. ITEM NO 2		38. QUANTITY (Q) UNIT TYPE NO		38(b). NO OF UNITS 1		39. CO CODE 586	
42. ITEM DESCRIPTION OF GOODS TEST		40. SRO NO		41. HS Code 0101.1000		46. LEVY	
43. UNIT VALUE Declared Assessed		44. TOTAL VALUE Declared Assessed		45. CUSTOM VALUE (PKR) Declared Assessed		47. RATE	
1		1		0.00000		48. SUM PAYABLE (PKR)	
49. SRO / Test Report No & Dt		50. FOB VALUE 222		51. FREIGHT 0.1		54. LANDING CHARGES @ 1%	
		52. CFR VALUE 5656		53. INSURANCE 99		55. OTHER CHARGES 0.00	
						56. ASSESSED VALUE PKR 0.00000	
						57. TOTAL REBATE CLAIM/ PROV. ASSMNT U/S 81 (PKR) 0.00	
58. MACHINE NO. & DATE  Exch. Rate: 0.00000		59. REVENUE RECOVER CODE LEVY		60. AMOUNT (PKR)		61. A.O's name, sig & stamp	
						62. P.A.s name, sig & stamp	
						63. Out of Charge Sig & Stamp	
						64. I/we declare that the above particulars are true & correct. SIG & DATE	
						65. C/F/D NO & DATE	
						66. Bank Stamp	

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**GOODS DECLARATION . GD- II**

File No.

<b>Continuation Sheet</b>					5. PAGE ____ OF PAGES ____									
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.		41.HS CODE								
42.ITEM DESCRIPTION OF GOODS  42(a.)						46.LEVY	47.RATE	48.SUM PAYABLE (PKR)						
									43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)	
									DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.		41.HS CODE								
42.ITEM DESCRIPTION OF GOODS  42(a.)						46.LEVY	47.RATE	48.SUM PAYABLE (PKR)						
									43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)	
									DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.		41.HS CODE								
42.ITEM DESCRIPTION OF GOODS  42(a.)						46.LEVY	47.RATE	48.SUM PAYABLE (PKR)						
									43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)	
									DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.		41.HS CODE								
42.ITEM DESCRIPTION OF GOODS  42(a.)						46.LEVY	47.RATE	48.SUM PAYABLE (PKR)						
									43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)	
									DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED
37.ITEM NO.	38. QUANTITY (a.) Unit type	38(b) No of units	39. CO CODE	40.SRO NO.		41.HS CODE								
42.ITEM DESCRIPTION OF GOODS  42(a.)						46.LEVY	47.RATE	48.SUM PAYABLE (PKR)						
									43. UNIT VALUE		44. TOTAL VALUE		45.CUSTOMS VALUES (PKR)	
									DECLARED	ASSESSED	DECLARED	ASSESSED	DECLARED	ASSESSED

  

58.MACHINE NO. & DATE			
A.O'S SIG. & STAMP		P.A'S SIG. & STAMP	64. DECLARANT'S NAME DESIGNATION, SIGNATURE & DATE

Copy of the United Nations Layout Key (UNLK) for trade documents as given in the document of 'Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business' (UN/CEFACT), United Nations, New York and Geneva, 2002, is enclosed for ready reference.

Practice: According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore.
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the standard.

**Recommendations:**

## 3.12. Standard

The Customs shall limit the data required in the Goods declaration to only such particulars as are deemed necessary for the assessment and collection of duties and taxes, the compilation of statistics and the application of Customs law.

**Overall Assessment:** Compliant

### Relevant Law:

- Customs Act; Section 219 and Item 16 of the Third Schedule.
- Customs Rules 433-444.
- The Customs General Order 12 of 2002 dated 15-06-2002 (the CGO).
- The United Nations Layout Key for Trade Documents

### Discussion:

*Law:* The Customs Act contains no specific requirements on the content of the goods declaration; however, Section 219(2) of the Customs Act authorizes the FBR to issue rules on matters specified in the Third Schedule to the Customs Act, and “good declaration” is listed as item 16 in the Third Schedule.

....required to be provided by declarant in the PACCS (electronic) system is as per provisions of this Standard. The particulars to be given in Goods declaration are those necessary for assessment and collection of duties and taxes, application of customs law and compilation of statistics. The format of GD contains sixty six (66) entries, which are according to the standard as laid down under the UN layout key. FBR has prescribed the format vide paragraph 4 of Chapter 3 of the CGO, reproduced below, is in accordance with the UNLK: In One-Customs system as well, the data required for filing of GD is the same. The said system is likely to be wound up in the near future after PACCS/ WeBOC is fully rolled out.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

### Resource Persons:

- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mrs. Zeba Haye, Collector of Customs, MCC Appraisement, Lahore.
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.13. Standard	Where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period.
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**Overall Assessment:** Non-Compliant

**Relevant Laws:**

- The Customs Act; Sections 81

**Discussion:**

*Law:* This Standard provides that where, for reasons deemed valid by the Customs, the declarant does not have all the information required to make the Goods declaration, a provisional or incomplete Goods declaration shall be allowed to be lodged, provided that it contains the particulars deemed necessary by the Customs and that the declarant undertakes to complete it within a specified period. There is no provision in the law and the procedure that an incomplete Goods declaration (GD) can be filed.

Law needs to be modified to allow a declarant to file incomplete GD because it is in the interest of facilitating trade. For consistency similar amendment may be made with respect to treatment of goods in circumstances as mentioned in the Standard and subject to appropriate security, for assessment of duty and clearance of goods in line with the concept of 'provisional release' as contained in Section 81 of the Customs Act.

*Practice:* The Customs Act is silent that an incomplete Goods declaration (GD) can be filed.

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendation:** A provision in the Customs Act may be added, after Section 81, to provide for filing of incomplete GD, in case complete information in respect of the imported goods, their description and value is clearly mentioned in the GD and in case customs officer deems valid the reasons given by the declarant, not having all the information required to make the a Complete Goods declaration and if the declarant undertakes to complete it within a specified period, which may be 30 days and subject to furnishing of adequate security, to the satisfaction of Customs, for doing do.

3.14. Standard	<p>If the Customs register a provisional or incomplete Goods declaration, the tariff treatment to be accorded to the goods shall not be different from that which would have been accorded had a complete and correct Goods declaration been lodged in the first instance.</p> <p>The release of the goods shall not be delayed provided that any security required has been furnished to ensure collection of any applicable duties and taxes.</p>
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**Overall Assessment:** Non-Compliant

**Relevant Laws:**

- The Customs Act; Sections 79 and 81
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): PACCS (Chapter XXI, Rules 422-556)

**Discussion:**

**Law:** Generally speaking, there is no provision in the Customs Act or in the rules made thereunder and the procedures that in case an incomplete Goods declaration (GD) is filed, it should be processed, assessment finalized and the goods released. Even the computerized system (PACCS) whether one customs or WeBOC, does not accept incomplete GDs. This should be programmed to allow when ordered by the appropriate level of officers.

In view of above, it is appropriate that if the Customs register a provisional or incomplete Goods declaration, it is logical that the tariff treatment to be accorded to the goods in such cases that should not be different from those that would have been accorded had a complete and correct Goods declaration been lodged in the first instance. Likewise, the release of goods should also not be delayed provided that any security prescribed for the purpose is furnished to ensure collection of any applicable duties and taxes.

**Practice:** According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi.
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendations:** Once a new provision is added in the Customs Act as mentioned in the discussion undertaken in the preceding Standard (3.13), for registering a provisional or incomplete GD. It is then logical to provide that the tariff treatment to be accorded to the goods shall not be different from that which would have been accorded had a complete and correct GD been lodged in the first instance and that the release of the goods will not be delayed provided that any security prescribed is furnished to ensure collection of any possible applicable duties and taxes.

3.15. Standard	The Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 79
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): PACCS (Chapter XXI, Rules 422-556 of the Customs Rules, 2001)
- Customs General Order 12 of 2002

**Discussion:**

*Introductory note:* This Standard requires that the Customs shall require the lodgement of the original Goods declaration and only the minimum number of copies necessary.

*Law:* When filing Goods declaration (GD) electronically in PACCS system (run with WeBOC software), which currently applies to over 70% of the transactions by volume, no hard copies are required for filing as the GD is electronically filed and processed.

In One-Customs system (electronic filing of GD and its manual processing), the GD is filed electronically but a minimum four hard copies are also filed, previously in 2002/2003 six copies were required to be filed. However, the declarants have been facilitated in the form of reduced paper work. One-Customs is likely to be replaced by PACCS/ WeBoc during 2013. No filing of hard copies will then be required except in some special cases e.g. Transit to Afghanistan.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Syed Tanvir Ahmed, Collector of Customs, MCC Port Muhammad Bin Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:**

3.16. Standard	In support of the Goods declaration the Customs shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of Customs law have been complied with.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 131.
- Chapter III of the Customs General Order No. 12 of 2002

**Discussion:**

*Introductory note:* This Standard stipulates that in support of Goods declaration the Customs shall require only those documents that are necessary to permit control of the operation and to ensure that all requirements relating to the application of Customs law have been complied.

*Law:* In electronic processing of Goods declaration (PACCS/ WeBOC), no hard documents are mandatory for clearance. Only information relating to Bill of Lading and invoice is required to be entered electronically while filing GD. Other documents are not attached. Customs call for the documents only when required for processing purposes and if required under the risk management system. The assessing officer generally calls for the packing list, Letter of Credit (L/C) and the Pro forma Invoice. However, documents like certificate of Origin, certificate of Plant Protection, Animal Quarantine, certification of for Pharmaceutical and Medicines etc. are only called when required under the law. These documents are received in the system as scanned copies; originals are asked for if there is some doubt about the documents.

Under One-Customs (electronic filing combined with manual processing) invoice, packing list, letter of credit (if any), bill of lading are required to be filed along with printed copies of the GD for processing of Goods Declaration.

In processing of Goods declaration under both electronic as well as One-Customs systems, Customs require only those documents as are deemed necessary to permit control of their operation and to ensure that all requirements relating to the application of Customs law have been complied.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisement, Karachi.
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.
- Mr. Ejaz khokhar, Chairman Readymade Garments Manufacturers and Exporters Association, (PRGMEA), Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.17. Standard	Where certain supporting documents cannot be lodged with the Goods declaration for reasons deemed valid by the Customs, they shall allow production of those documents within a specified period.
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**Overall Assessment:** Partially Compliant

**Relevant Laws:**

- The Customs Act; Sections 79 and 81.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): Chapter XXI, Rules 422 to 556 of the Customs Rules, 2001

**Discussion:**

*Law:* The Customs Act does not cover the situation stipulated in the Standard. In PACCS system Goods declaration (GD) has to be filed with the supporting documents, lest the system does not move forward.

In One-Customs as well, GD is accepted into the system only when it is accompanied by supporting documents.

In practice, however, the customs officers, allow this in exceptional cases after recording reasons thereof, and manual filing of a GD with deficient documents is allowed for the processing of the documents.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar
- Agha Shahid Majeed, Additional Collector of Customs, MCC, PACCS, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendation:** Once a new section is added in the Customs Act as mentioned in the discussions in the preceding Standard (3.13), for registering a provisional or incomplete GD. It also be provided that, where certain supporting documents cannot be lodged with the GD for reasons deemed valid by the Customs, they shall allow production of those documents within a specified period, provided that the security prescribed in the Law and Rules by the Customs is furnished, to ensure collection of any applicable duties and taxes.

It is thus appropriate that this facility may be provided-for in the law, to all the goods crossing borders as a special facilitation measure in cases of genuine hardship, subject to production of documents in a specified period and subject to furnishing of adequate security for doing so. These conditions should be clearly specified in Law and the Rules to avoid misuse of the facility.

3.18. Transitional Standard

The Customs shall permit the lodgement of supporting documents by electronic means.

**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 155Q.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): Rules 433, 437, 438, 449 and 455.

**Discussion:**

*Law:* Pakistan Customs has already allowed lodgement of supporting documents electronically under PACCS (being run with WeBOC software.). However, at some land customs stations (e.g. in Islamabad), where manual system is still operational under 'One-Customs' system, documents are not allowed to be submitted electronically as the system does not support lodgment of documents by electronic means.

Customs operations in this regard will become fully compliant once WeBOC is applied nationwide before June 2013 as planned.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard

**Recommendations:** No recommendations are deemed necessary at this time.

3.19. Standard	The Customs shall not require a translation of the particulars of supporting documents except when necessary to permit processing of the Goods declaration.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 155 Q.
- The Customs Rules; (Notification No. SRO 450(I)/2001 dated 18-06-2001): Rules 433, 437, 438, 449 and 455

**Discussion:**

*Law:* Section 155N of the Customs Act provides for translation of a necessary support document, if not in the language acceptable to the computerized system or and when deemed necessary for making correct assessment for duties, taxes etc.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard

**Recommendations:** No recommendations are deemed necessary at this time.

## 3.20. Standard

The Customs shall permit the lodging of the Goods declaration at any designated Customs office.

**Overall Assessment:** Not Compliant

### Relevant laws:

- The Customs Act; Sections 3.3A, 3AA, 3B, 3BB, 3BBB, 3C, 3CC, 3D, 3DD, 3E, and 9
- Notification No. S.R.O. 100(I)/83 dated 12<sup>th</sup> February, 1983 (Customs Ports)
- Notification No. S.R.O. 101(I)/83 dated 12<sup>th</sup> February, 1983 (Customs Airports)
- Notification No. S.R.O. 102(I)/83 dated 12<sup>th</sup> February, 1983 (Land Customs Station and Routes)
- Notification No. S.R.O. 103(I)/83 dated 12<sup>th</sup> February, 1983 (Ports for the carrying on of coastal trade within the Customs Ports in Pakistan)

### Discussion:

**Law:** Under Section 9 of the Customs Act various Customs stations have been declared through official legal notifications called Gazette Notifications. The section reads as under:

**9. Declaration of customs–ports, customs airports, etc.** - The Board may, by notification in the official Gazette, declare:

- a) The places which alone shall be customs-ports or customs airports for the clearance of goods or any class of goods imported or to be exported;
- b) The places which alone shall be land customs-stations for the clearance of goods or any class of goods imported or to be exported by land or inland waterways;
- c) The routes by which alone, goods or any class of goods specified in the notification may pass by land or inland waterways into or out of Pakistan, or to or from any land customs-station or to or from any land frontier;
- d) The places which alone shall be ports for the carrying on of coastal trade with any specified customs-ports in Pakistan; and
- e) What shall for the purposes of this Act be deemed to be a custom house and the limits thereof.

A few Notifications issued under Section 9 *ibid* have been given below:

- i. Notification No. S.R.O. 100(I)/83 dated 12<sup>th</sup> February, 1983 (Customs Ports)
- ii. Notification No. S.R.O. 101(I)/83 dated 12<sup>th</sup> February, 1983 (Customs Airports)
- iii. Notification No. S.R.O. 102(I)/83 dated 12<sup>th</sup> February, 1983 (Land Customs Station and Routes)
- iv. Notification No. S.R.O. 103(I)/83 dated 12<sup>th</sup> February, 1983 (Ports for the carrying on of coastal trade within the Customs Ports in Pakistan)

Lodging of GD for consignments destined for a particular designated customs station requires that the Customs processing should be completed within the jurisdiction of that Custom Station. In other words, a declarant, irrespective of his work location, may file GD at the Customs station where goods have arrived.

The software of WeBOC and One-Customs computer systems has been designed in the perspective of legal provisions. This arrangement allows filing of GD by a declarant from anywhere in Pakistan but only for the designated Customs station, i.e. the station where the goods are lying and are required to be cleared as per Bill of Lading (BL) and the Import General Manifest (IGM). In case of import, where the goods are to be presented for customs processing for exportation thereof, a consignment which is destined for one designated Customs station, GD cannot be filed electronically with another

designated Customs station. The electronic system is not designed to process the same at any customs station other than the one where the goods have been unloaded or have arrived for clearance or are physically available.

In PACCS, every designated Customs collectorate has been allocated a code so that GD for goods arriving in that collectorate may be filed in that collectorate only.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization.
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendations:**

## 3.21. Transitional Standard

The Customs shall permit the lodging of the Goods declaration by electronic means.

**Overall Assessment:** Compliant

### Relevant Laws:

- The Customs Act; Sections 79, 104, 131 and 155Q
- The Customs Rules; (Notification No. SRO 450(I)/2001 dated 18-06-2001): Rules 433 to 444
- Notification Number 450(I) 2001 dated 18-06-2001

### Discussion:

*Introductory note:* The Standard requires that Customs shall permit lodging of Goods declaration (GD) by electronic means. In other words, there should not be any limitations or conditions on such filing.

*Law:* The Customs Act allows lodging of GD both by manual and electronic means under Sections 79, 104, 131 of the Customs Act read with Section 155Q, which is reproduced here;

**155Q. Electronic exchange of information and authentication through the Customs Computerized System:** *Any declaration, documents or record, accounts, notice, order, payment, authentication, authorization or information required, delivered or provided by the Customs or any registered user shall be deemed to have been required, delivered, provided or done under this Act when communicated electronically through the Customs Computerized System.*

In PACCS all GDs are filed electronically. In case of One-Customs, the original GD is filed by electronic means. However, hard copies can also be filed manually to allow manual processing in appropriate cases.

A few stake holders have expressed certain reservations about the frequent failure of power supply and hanging of computer system. These short comings can easily be overcome by administrative actions. Our enquiries have revealed that department being conscious of the short comings is already making efforts to enhance the capacity of the system.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

### Resource Persons:

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi.
- Mrs. Zeba Hahee, Collector of Customs, MCC Appraisalment, Lahore.
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.
- Mr. Nasir Chandnaa, Customs House Agent, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard

### Recommendations:

3.22. Standard	The Goods declaration shall be lodged during the hours designated by the Customs.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 65.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): Rules 433 to 443.
- Notification No. 450(I)/2001 dated 18-06-2001.
- Notification No. 113(I)/83 dated 12-02-1983.
- FBR letter C. No. 6(4)/2005-CB dated 05-06-2006

**Discussion:**

*Introductory note:* The Standard requires lodging of Goods declaration (GD) in hours designated by Customs. The purpose is that if lodgement hours are designated by Customs, the trade will feel certain how to schedule business for goods clearance.

*Law:* The requirements of the Standard have already been met under the provisions of Section 65. In this connection FBR has also issued Notification Number 113(I)/83 dated 12-02-1983 and letter bearing C. No. 6(4)2005-CB dated 05-06-2006.

**Section 65 reads as under:**

**65. Goods not to be loaded or unloaded or passed on certain days or at certain times:**

Except with the permission in writing of the appropriate officer and on payment of such fees as may be prescribed by the Board no goods, other than passengers' baggage or mail bags, shall in any customs-port be discharged, or be shipped or water-borne to be shipped or shall be loaded or unloaded or passed at any land customs-station or customs-airport-

- a) On any public holiday within the meaning of section 25 of the Negotiable Instruments Act, 1881(XXVI of 1881), or on any day on which the discharge or shipping of cargo at customs-port or loading, unloading passage or delivery of cargo at any land customs-station or customs-airport, as the case may be, is prohibited by the Board by notification in the official Gazette; or
- b) On any day except between such hours as the Board may, from time to time, by a like notification, appoint

Provided that where the Customs Computerized System is in operation, all loading and discharge may be allowed by the Collector of Customs round the clock and on all days.

Besides the above proviso to Section 65 of the Act, Rules 477, 532 and 554 of the Customs Rules provide for round the clock facilities. The referred-to rules read as under:

**477. Security seals:** The Terminal Operator shall, except in case of over-dimension cargo or notified heavy cargo, ensure that before the cargo is allowed exit from port of entry, security seals have been affixed on all the containers by the Customs Container Security Unit (CCSU) staff or any person so authorized by the Board, who shall be available at the port on twenty four-hours a day and seven days a week basis and shall seal the containers as required by the Terminal Operator:

**532. Pre-pact procedure:** The pre-pact procedure hereinafter specified and facilities created there under shall, in view of the fixed banking hours, provide round the clock on line

facility to the tax payers to discharge their legal liabilities accruing out of clearance of goods through PACCS.

**554. Minimum conditions for registration under sections 155C and 155D of the Act:**

The following are the minimum conditions or requirements for grant of registration to the Terminal Operator:

- i. The terminal shall be operative on 24 hours X 7days X 365days basis.
- ii. Examination Facilities: The Terminal Operator shall provide:
- iii. Examination areas shall be capable of round the clock operations.

The given timings are being followed. In case of PACCS, maximum filing of GDs takes place in day time. After usual office hours, the frequency of GD filing drops sharply. In the night hours, filing of GD is rare.

The facility for 'prior release' of consignments of urgent nature as per provisions of rule 43 to 48 of the Customs Rules, 2001, is being provided at all international airports, on round the clock basis.

In case of One-Customs there is no instance of an emergency requiring filing of GD outside business hours.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi.
- Mr. M. Yaqoob Mako, Additional Collector of Customs, AFU, Karachi.
- Dr. Asif Mehomood Jah, Additional Collector of Customs (AFU), MCC, Preventive, Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard. The law is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.23. Standard	Where national legislation lays down a time limit for lodging the Goods declaration, the time allowed shall be sufficient to enable the declarant to complete the Goods declaration and to obtain the supporting documents required.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 82 and 224

**Discussion:**

*Law:* Section 79 of the Customs Act stipulates 15 days, time from arrival of the goods, for filing of Goods declaration. Relevant portion of the section is reproduced herein below;

**79. Declaration and assessment for home consumption or warehousing:**(1)The owner of any imported goods shall make entry of such goods for home consumption or warehousing or for any other approved purposes, within fifteen days of the arrival of the goods, by ---.

The declarant is thus allowed sufficient time i.e. 15 days to enable the declarant to complete the Goods declaration and to obtain the supporting documents required.

GDs' in almost all cases get filed in fourteen days. Delays in filing of GD are reportedly rare but no statistics were made available by FBR/Customs. Even otherwise, such delays are generally condoned, if found genuine, in exercise of powers conferred under Section 224 of the Customs Act. For facility of reference, Section 224 is reproduced herein below;

**224. Extension of time limit:** The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made thereunder.

**4. Powers and duties of officers of customs:** An officer of customs appointed under section 3 shall exercise such powers and discharge such duties as are conferred or imposed on him by or under this Act [or the rules made thereunder]; and he shall also be competent to exercise all powers and discharge all duties conferred or imposed upon any officer subordinate to him:

Provided that, notwithstanding anything contained in this Act or the rules, the Board may, by general or special order, impose such limitations or conditions on the exercise of such powers and discharge of such duties as it thinks fit.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, Karachi.
- Mr. M. Arif Moton, Advocate and former Member (Judicial), Customs Appellate Tribunal, Karachi.
- Mr. Zahid Ali Baig. Additional Collector of Customs, MCC, Islamabad and focal person for FBR on computerization.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.24. Standard	At the request of the declarant and for reasons deemed valid by the Customs, the latter shall extend the time limit prescribed for lodging the Goods declaration.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 3, 4, 79 and 224.
- Notification Number S.R.O. 371(I)/2002 dated 15-06-2002

**Discussion:**

*Law:* Section 224 of the Customs Act empowers the Federal Government, FBR and the appropriate officer of Customs to grant extension in statutory period to mitigate or prevent hardship. It is a rare phenomenon but usually leniently viewed and such delays are condoned, if found genuine. Section 224 allowing such condonation is reproduced herein below:

**224. Extension of time limit:** The Federal Government, the Board or the appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made there under.

Section 224, inter alia, provides that an appropriate officer of customs, may, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made there under.

To facilitate the trade, the appropriate officer may be notified under Section 224 of the Customs Act, read with Section 4 thereof.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Airport, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisment Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** It is recommended that the Notification Number SRO 371(I) 2002 dated 15-06-2002 may be modified empowering either Collector or Additional Collector of Customs, to condone the delay in filing a GD within 15 days, as provided under Section 79 of the Customs Act. Furthermore, the corresponding amendment may also be made in Section 79 of the Customs Act for empowering appropriate officer for condonation of delay or for extension of period of fifteen days specified in the said section, upon being approached by an aggrieved party if satisfied that the delay was beyond the control of the applicant and that by granting such extension there is a possibility of

some loss or hardship to the applicant being mitigated or prevented, condone the delay and extend the time limit laid down in this Act or the rules made there under.

3.25. Standard	National legislation shall make provision for the lodging and registering or checking of the Goods declaration and supporting documents prior to the arrival of the goods.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Second proviso to sub section (1) of section 79
- The Customs Rules; (Notification Number 450(I)/2001 dated 18-06-2001): PACCS Rules- Rule 422 to 556.

**Discussion:**

*Law:* The Customs Act meets the requirements of the Standard. Second Proviso to Sub-Section (1) of section 79 of the Act clearly provides that an importer of goods may file GD, as early as ten days before expected arrival of the goods.

For facility of reference, Section 79 is reproduced herein below:

**79. Declaration and assessment for home consumption or warehousing:**

The owner of any imported goods shall make entry of such goods for home consumption or warehousing or for any other approved purposes, within fifteen days of the arrival of the goods, by,-

- a) Filing a true declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribe ; and
- b) Assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user of the Customs Computerized System:

Provided that if, in case of used goods, before filing of goods declaration, the owner makes a request to an officer of customs not below the rank of an Additional Collector that he is unable, for want of full information, to make a correct and complete declaration of the goods, then such officer subject to such conditions as he may deem fit, may permit the owner to examine the goods and thereafter make entry of such goods by filing a goods declaration after having assessed and paid his liabilities of duties, taxes and other charges:

Provided further that no goods declaration shall be filed prior to ten days of the expected time of arrival of the vessel.

If an officer, not below the rank of Additional Collector of Customs, is satisfied that the rate of customs duty is not adversely affected and that there was no intention to defraud, he may, in exceptional circumstances and for reasons to be recorded in writing, permit, substitution of a goods declaration for home consumption for a goods declaration for warehousing or *vice versa*.

An officer of Customs, not below the rank of Assistant Collector of Customs, may in case of goods requiring immediate release allow release thereof prior to presentation of a goods declaration subject to such conditions and restrictions as may be prescribed by the Board.

GD's are filed before arrival of the goods. When assessment is completed, however, the release of goods has to wait till arrival and examination of goods, if required.

*Practice:* It appears that Customs practice follows the law.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

### 3.26. Standard

When the Customs cannot register the Goods declaration, they shall state the reasons to the declarant.

**Overall Assessment:** Partially Complaint

**Relevant Laws:**

- The Customs Act; Sections 79, 104, 131 and 139.
- Customs General Order Number 12 of 2002 dated 15-06-2002.

**Discussion:**

*Law:* Under the Computerized system where an incomplete GD is filed, the computer automatically rejects the registration thereof, reflecting the reasons or omissions, on the screen.

Under One-custom system, when GD is manually handled, the dealing officer indicates the specific reasons for accepting the Goods Declaration for registration. Sometimes, the omissions in the Goods Declaration are verbally indicated or sometimes in writing on a paper in order to have uniformity in the process.

It is advisable that reasons are communicated to declarant in writing on a standardized sheet as is done in banks when a cheque is returned unpaid in clearance.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Syed Tanvir Ahmad, Collector Customs MCC Port Qasim, Karachi.
- Dr. Asif Jah, Additional Collector of Customs MCC (Preventive), Lahore.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, Appraisement Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendations:** It is recommended that the reasons for Customs being unable to register a GD must be communicated, in writing in a standardized format, to the person presenting the GD for registration and process thereof. Further, in manual system, under the rules, a form containing the list of objections for which GD is not being registered may be provided to the person presenting the GD for registration and process thereof. This form should be signed and dated by the appropriate officer, appointed for receiving of GD, under Section 79, 104, 131 139 of the Customs Act. To carry out these above recommendations, appropriate instructions may be issued through a Customs General Order, by modifying CGO 12/2002 dated 15-06-2002.

## 3.27. Standard

The Customs shall permit the declarant to amend the goods declaration that has already been lodged, provided that when the request is received they have not begun to check the goods declaration or to examine the goods.

**Overall Assessment:** Compliant

### Relevant Laws:

- The Customs Act; Section 29.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001): PACCS Rules - Rule 532 to 537

### Discussion:

*Law:* Section 29 of the Customs Act covers the requirements of this Standard. The amendment in GD under the section is allowed at any time before the goods are removed either from Customs area or assigned a Customs Reference Number electronically, as the case may be. Whereas, the Standard restricts the amendment of GD before beginning of checking of the GD. Thus, the Act is more facilitative in nature. Section 29 is reproduced here-in-below:

**29. Restriction on amendment of goods declaration.-** Except as provided in Section 88, no amendment of goods declaration relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the customs-area or assigned a Customs Reference Number electronically, as the case may be.

In PACCS, a GD can be amended or modified at any time prior to issuance of a Computerized Reference Number (CRN) which is allocated after payment of the assessed duty and taxes. Allocation of CRN is taken as registration of the GD before that the GD form is being filled electronically step by step, by the declarant, as the system allows. Where the system indicates on the screen the tentative assessment of duties and taxes, it requires the declarant to enter particulars of relevant bank account as per pre-pact procedure Relevant rules are rules 532 to 537 of the Customs Rules which are reproduced here-in-below:

**532. Pre-pact procedure:** The pre-pact procedure hereinafter specified and facilities created there under shall, in view of the fixed banking hours, provide round the clock on line facility to the tax payers to discharge their legal liabilities accruing out of clearance of goods through PACCS.

**533. NBP to provide pre-pact facility:** A common account in the name of Collector, Model Collectorate of Customs, shall be opened and maintained at any branch of the National Bank of Pakistan (NBP) designated by PACCS wherein all users may deposit any amount they may like to and, in relation thereto, the bank branch shall electronically communicate the amount and the particulars of the depositor to PACCS on line.

**534. Payments through pre-pact:** Where any payment is required to be made through pre-pact, PACCS shall communicate the particulars like NTN, BL. No., Tax Code, Account Heads, relevant sub-totals and grand total to the National Bank of Pakistan, which shall transfer equivalent amount from pre-pact to the relevant heads of account.

**535. Withdrawals:** Where the user has made certain deposits under rule 533, he shall be within his discretionary right to withdraw any amount so deposited by him from pre-pact by filling out the form as provided on the web and in case sufficient amount is in balance owing to the user, a cross cheque shall be printed and signed by an officer of customs authorized by the Collector in that behalf and dispatched in favor of account number of the user against information provided by the user in his user profile.

**536. Authority over funds:** Pre-Pact is a voluntary account where deposits are kept on behalf of the user and the user retains full control over the amount so deposited by him in advance and, as such, shall not be taken over, frozen, adjusted, etc., without the consent of the user.

**537. Furnishing securities:** The facility of pre-pact may be used at the discretion of the user for purpose of furnishing securities in cases where securities may be required by the customs authorities and in such an event, the user may opt to deposit an equivalent amount which shall be treated by PACCS as security and released, or en-cashed, as soon as the matter is settled.

At this stage the importer either enters the bank particulars or he lets the system keep the process of registration pending but as soon as the declarant enters particulars of the bank account and the system validates the same, on the appropriate command for doing so, by the declarant, the payment of duties and taxes are automatically made by deducting the corresponding amount from the bank account. On this CRN is issued, indicating the registration of the GD.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.28. Transitional Standard	The Customs shall permit the declarant to amend the Goods declaration if a request is received after checking of the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 29 and 88.
- The Customs Rules; (Notification Number 450(I)/2001 dated 18-06-2001): PACCS Rules- Rule 532 to 537

**Discussion:**

*Introductory note:* This Standard, transitional in nature, stipulates that the Customs shall permit the declarant to amend the Goods declaration (GD) if a request is received after checking of the Goods declaration has commenced, if the reasons given by the declarant are deemed valid by the Customs.

*Law:* Section 29 of the Customs Act covers the requirements of this Standard. The amendment in GD under the section is allowed at any time before the goods are removed either from Customs area or assigned a Customs Reference Number electronically, as the case may be. Whereas, the Standard required that the Customs shall permit the declarant to amend the Goods Declaration if a request is received after checking of the Goods Declaration has commenced and the reasons given by the declarant are deemed valid by the Customs. Thus, the Act is more facilitative in nature. Section 29 is reproduced here-in-below;

**29. Restriction on amendment of goods declaration:** Except as provided in section 88, no amendment of goods declaration relating to goods assessed for duty on the declared value, quantity or description thereof shall be allowed after such goods have been removed from the customs-area or assigned a Customs Reference Number electronically, as the case may be.

In PACCS, a GD can be amended or modified at any time prior to issuance of a Computerized Reference Number (CRN), which is allocated after payment of the assessed duty and taxes. Allocation of CRN is taken as registration of the GD before that the GD form is being filled electronically step by step, by the declarant, as the system allows. Where the system indicates on the screen the tentative assessment of duties and taxes, it requires the declarant to enter particulars of relevant bank account as per pre-pact procedure (Rule 532 to 537 of the Customs Rules, 2001). At this stage, the importer either enters the bank particulars or he lets the system keep the process of registration pending but as soon as the declarant enters particulars of the bank account and the system validates the same, on the appropriate command for doing so, by the declarant, the payment of duties and taxes are automatically made by deducting the corresponding amount from the bank account. On this CRN is issued, indicating the registration of the GD.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC, Karachi.
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot.
- Mr. Muhammad Arif Moton, Advcoate and former Member (Judicial), Customs Appellate Tribunal, Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.29. Transitional Standard	The declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.
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**Overall Assessment:** Partially Compliant

**Relevant Laws:**

- The Customs Act; Section 79.
- The Customs Rules; (Notification Number 450(I)/2001 dated 18-06-2001): PACCS Rules - Rules 422-556.

**Discussion:**

*Introductory note:* The Standard, transitional in nature, stipulates that the declarant shall be allowed to withdraw the Goods declaration and apply for another Customs procedure, provided that the request to do so is made to the Customs before the goods have been released and that the reasons are deemed valid by the Customs.

*Law:* Sub-Section (2) of Section 79 of the Customs Act provides that where an officer, not below the rank of Additional Collector of Customs, is satisfied that the rate of customs duty is not adversely affected and that there was no intention to defraud, he may, in exceptional circumstances and for reasons to be recorded in writing, permit, substitution of a Goods declaration for home consumption for a Goods declaration for warehousing or *vice versa*.

Provisions of Sub-Section (2) of Section 79 of the Act are restrictive in nature as they are confined only to two transactions, i.e. home consumption and warehousing, whereas, the Standard provides for an extended facility in all the transactions including trans-shipment and export of the imported goods. In order to bring the Pakistan Customs Regime, in line with the Standard, it is deemed appropriate that option to withdraw a GD filed for an import procedure may be allowed and another GD may be allowed to be filed for any other customs procedure, such as trans-shipment and re-export of the imported goods.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Aamir Ahmed, Collector of Customs, MCC PACCS, Karachi.
- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC, Appraisement Karachi.
- Mr. Sarfaraz Warraich, Collector of Customs MCC, Sambrial, Sialkot.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendation:** Sub-Section (2) of Section 79 of the Customs Act may be modified to allow withdrawal of the GD filed for one Customs procedure and to apply for another Customs procedure, provided that the request to do so is made, by the declarant, to the Customs before the goods have been released and that the reasons are considered to be valid by the Customs.

3.30. Standard	Checking the Goods declaration shall be effected at the same time or as soon as possible after the Goods declaration is registered.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 80.
- Paragraph 2(C) of Chapter II of Appraiser's Manual

**Discussion:**

*Law:* Under Section 80 of the Customs Act there is no time lag between filing and commencing checking of Goods Declaration. It is a general practice of the Customs that checking of GD starts as soon as it is filed in electronic system of PACCS (WeBOC). The system selects the Goods declaration for processing either in green, yellow or red channel on the basis of the profile of the importer and risk management system immediately after its filing.

**80. Checking of goods declaration by the Customs:**

On the receipt of goods declaration under Section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.

An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;

If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty.

In case of the Customs Computerized System, goods may be examined only on the basis of computerized selectivity criteria.

The Collector may, however, either condone the examination or defer the examination of imported goods or class of goods and cause it to be performed at a designated place as he deems fit and proper, either on the request of the importer or otherwise.

The system is designed to electronically process the Goods declaration (GD) and having applied the selectivity and risk criteria, it scrutinizes the contents of the GD and completes the processing in real time, placing it in one of the following three channels:-

Under green channel, Goods declaration is cleared through system and a 'gate out' message is sent to the terminal operator and consignment is released without examination.

Under yellow channel, Goods declaration is sent to assessing officer who processes the goods declaration and, if found in order, he endorses it as out of charge on the goods declaration. If assessing officer considers that the declaration is incomplete, Goods declaration is sent for examination in order that the assessment is correctly made.

Under red channel, as soon as the goods declaration is filed, system generates the message to terminal operator and goods are grounded for examination.

The 'Appraiser's Manual' has been issued by the Customs for use by its Appraising Officers. Paragraph 2(C) of Chapter II contains directions to promptly deal with the Goods declaration and ordinarily be dealt with in the same day. The paragraph reads as under:

**Prompt disposal of bills of entry:** It is of great importance that Appraisers should deal with all bills of entry promptly. As far as possible, bills of entry received by them on any day should be dealt with on the same day.

After application of WeBOC (PACCS), a goods declaration is processed electronically in real time. To this extent, the instructions as contained in paragraph 2(c) above stand modified.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Dr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.31. Standard	For the purpose of checking the Goods declaration, the Customs shall take only such action as they deem essential to ensure compliance with Customs law.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 80

**Discussion:**

*Law:* This Standard enunciates that Customs restrict their checking of GD only to such action as they deem essential to ensure compliance with Customs Law. The essential steps for checking of GD are provided in Section 80 of the Customs Act which is reproduced below;

**Section 80: Checking of goods declaration by the Customs:-**

- i. On the receipt of goods declaration under Section 79, an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment, and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.
- ii. An officer of Customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents, as and when and in the manner deemed appropriate, during or after release of the goods by Customs;
- iii. If during the checking of goods declaration, it is found that any statement in such declaration or document or any information so furnished is not correct in respect of any matter relating to the assessment, the goods shall, without prejudice to any other action which may be taken under this Act, be reassessed to duty.
- iv. In case of the Customs Computerized System, goods may be examined only on the basis of computerized selectivity criteria.

In electronic system of WeBOC, on the basis of Risk Management techniques, the System allows processing of Goods declaration in green, yellow or red channels.

Under green channel, Goods declaration is cleared through System and a 'gate out' message is sent to the terminal operator and consignment is released without examination.

Under yellow channel, Goods declaration is sent to assessing officer who processes the goods declaration and, if found in order, he endorses it as out of charge on the goods declaration. If assessing officer considers that the declaration is incomplete, Goods declaration is sent for examination in order that the assessment is correctly made.

Under red channel, the goods declaration is checked and found to require goods examination so the, System generates the message to terminal operator and goods are grounded for examination. The assessment is completed after examination of the goods and thorough scrutiny of GD.

Under One-Customs also, the system starts assessment process immediately after the completion of filing of GD. Customs only take such action as they deem essential to ensure compliance with the law.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Mr. Nasir Chandna, Customs Clearing Agent, Customs House, Karachi.
- Dr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

<p>3.32. Transitional Standard</p>	<p>For authorized persons who meet criteria specified by the Customs, including having an appropriate record of compliance with Customs requirements and a satisfactory system for managing their commercial records, the Customs shall provide for :</p> <ul style="list-style-type: none"> <li>– Release of the goods on the provision of the minimum information necessary to identify the goods and permit the subsequent completion of the final Goods declaration;</li> <li>– Clearance of the goods at the declarant's premises or another place authorized by the Customs; and, in addition, to the extent possible, other special procedures such as :</li> <li>– Allowing a single Goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person;</li> <li>– Use of the authorized persons' commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;</li> <li>– Allowing the lodgment of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.</li> </ul>
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 66 and 80

**Discussion:**

*Introductory note:* The Standard requires that for authorized persons who have an appropriate record of compliance with Customs and who meet the specified criteria, the Customs shall provide for:

- i. Release of their goods on providing minimum information necessary to identify the goods and permit subsequent completion of the final Goods declaration;
- ii. Clearance of the goods at the declarant's premises or another place authorized by the Customs;
- iii. Provide for other special procedures, to the extent possible, such as
  - a. Allowing a single Goods declaration for all imports or exports in a given period.
  - b. Self-assessment of their duty and tax liability on the basis of their commercial record;
  - c. Allowing lodgment of the Goods declaration by means of an entry in the records of the authorized person to be supported subsequently by a supplementary Goods declaration.

This Transitional Standard, being part of the General Annex, was required to be implemented before 3<sup>rd</sup> February, 2011, i.e. within 60 months of the date when the General Annex entered into force on 3<sup>rd</sup> February, 2006. It may be noted that Pakistan ratified RKC on 24<sup>th</sup> of February, 2004 and it was accepted by WCO on 1<sup>st</sup> of October, 2004.

**Law:** At present, the law does not cater for the facilities enumerated in the Standard. Nevertheless, under the provisions of Sub-Section (5) of Section 80 of the Customs Act for examination and clearance of goods at the declarant's premises or another designated place authorized by the Customs, may be carried out either on the request of the importer or otherwise, if so decided by the Collector of Customs having jurisdiction. The said sub section is reproduced below:-

(5) The Collector may, however, either condone the examination or defer the examination of imported goods or class of goods and cause it to be performed at a designated place as he deems fit and proper either on the request of the importer or otherwise.

*Practice:* It appears that Customs practice follows the law.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendation:** FBR may consider making provisions/Rules, to meet the requirements of the Standard thereto, if the circumstances so and when warrant. This can be on the pattern of Authorized Economic Operator (AEO). This will require detailed analysis as such AEOs can be Importers, Exporters, Customs agents (Brokers), Shipping Agents etc.

3.33. Standard	When the Customs decide that goods declared shall be examined, this examination shall take place as soon as possible after the goods declaration has been registered.
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**Overall Assessment:** Compliant

**Relevant law:**

- The Customs Act; Section 80

**Discussion:**

*Introductory note:* The Standard requires that when Customs decide to conduct examination of goods, the examination shall take place as soon as possible.

*Law:* The Law and the procedures do not stipulate any undue delay in conducting goods examination. There is a minimum time lag in making the arrangements for goods examination. A reporting mechanism under Examination Manual (Customs), Edition 1996, Customs House, Karachi provides supervisory audit on performance of staff.

Appendix-XXII (MONTHLY Performance Report of Wharf for the Month Of\_\_\_\_\_

*A copy of the Appendix is attached.*

In actual practice there is no unnecessary time lag in a customs decision to examine goods and the actual examination. In the PACCS system, the decision to examine goods is simultaneously transmitted to examination staff of Customs and to terminal operator in real time. The latter makes arrangements for examination of goods. Customs are then bound to complete the examination early because the electronic system keeps signaling status of pendency as well as Terminal Operator's preparedness.

In One-Customs, examination order is recorded on the GD which is sent to examination sheds physically. Since, Terminal Operators/Custodian of goods is also immediately informed, he grounds the goods (Container) for examination and the officers then conducts the examination.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector Customs, MCC, Port Qasim, Karachi.
- Dr. Asif Jah, Additional Collector of Customs, MCC (Preventive), Lahore.
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

3.34. Standard	When scheduling examinations, priority shall be given to the examination of live animals and perishable goods and to other goods which the Customs accept are urgently required.
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**Overall Assessment:** Substantially Compliant

**Relevant law:**

- The Customs Act; Sections 80.
- The Customs Rules; (Notification Number 450(I)/2001 dated 18-06-2001): Rules 43 to 48

**Discussion:**

*Introductory note:* As a general practice, live animals, live plants, perishable medicines and lifesaving drugs, newspapers, journals, fresh vegetables, fruits and flowers and other perishable goods are given priority in examination.

*Law:* A special procedure titled “Prior Release of Urgent Consignments” in rules 43 to 48 of the Customs Rules, 2001 also includes the above mentioned categories of goods and other urgent consignments in this scheme of “immediate and rapid clearance as a matter of priority”.

These items are:-

**Rule 43 (IV)**

- Human body organs or any part thereof, blood and blood plasma;
- Perishable medicines e.g. insulin, etc;
- Lifesaving drugs in nominal quantities, duly supported by medical prescription;
- Live animals and live plants;
- Radioactive materials;
- Replacement parts of computers, machines and drilling equipment (e.g. drilling bits);
- Any other goods, urgently required, with the approval of the Collector of Customs, in writing, on case to case basis; and
- Fertilizer imported by the Fertilizer Import Department, Ministry of Food and Agriculture.

Other items are fresh fruit, flowers and vegetables, fresh and frozen meat and fish, betel leaves, Butter, Cheese, Eggs, Soft drinks etc.

Under this procedure which operates 24/7, the requirements of the Standard are satisfied. In view of the entry number (h) in clause (iv) of sub-rule (1) of Rule 43 of the Customs Rules (Chapter IV: Prior Release), reproduced below, the law is in substantial compliance with the Standard. This need to be more transparent and such goods should be described in detail so that there is little discretion with customs.

*Practice:* It appears that Customs practice follows the law.

**Conclusion:** Based on the above research, it appears that the law and practice is substantially in compliance with the Standard.

**Recommendation:** Entry number (h) in clause (iv) of sub-rule (1) of Rule 43 of the Customs Rules, 2001 (Chapter IV: Prior Release) may be modified to provide for grant of permission by Customs officer in charge dealing with the ‘Prior Release Procedure’ instead of Collector of Customs. This need to be more transparent and such goods should be described in detail so that there is little discretion with customs. The list may be further expanded based on experience of customs in the past.

3.35 Transitional Standard	If the goods must be inspected by other competent authorities and the Customs also schedules an examination, the Customs shall ensure that the inspections are coordinated and, if possible, carried out at the same time.
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**Overall Assessment:** Non- Compliant

**Relevant law:**

- The Customs Act; Section 80, 127, 129, 131, 139
- Customs Rules; 604, 607

**Discussion:**

*Law:* Customs conduct examination of goods under Section 80 of the Act, which provides for checking of 'Goods Declaration' and examination of goods at any time after the import. Similarly, Sections 127 and 129 thereof deal with the goods-in-transit. Provisions similar to Section 80 exist in Section 131 of the Act for export of goods from Pakistan. Section 139 deals with the inspection of baggage of passengers and Section 144 and 145 relate to postal parcels.

Additionally, under rules 604 and 607 of the Customs Rules, read with clause (xvi) of rule 600 thereof (which fixes the quantity of inspection up to 5% of transit consignment), the competent customs officer is empowered to examine transit goods. However, in practice, this percentage of examination is not strictly observed and as per verification from a clearing agent and a concerned officer of Customs, currently it goes up to 15%.

Section 198 of the Customs Act further empowers the Collector to schedule the inspection/examination of goods specifying place, time and date for such inspection. Several other departments as well, under various statutes, require inspection of the imported/export-bound goods, such as departments of Plant Protection, Animal Quarantine, Explosives as well as several agencies such as Anti-Narcotics Force (ANF), Pakistan Standards and Quality Control Authority (PSQCA) and Federal Investigation Agency (FIA).

A joint inspection in the situation envisaged in the Standard under reference is of benefit to all. It will save duplication of effort, reduce cost of importer and simplify the process of inspection by two or more authorities. It will also add to transparency and objectivity of the reports.

To our knowledge, there is no set procedure for joint examination of goods. However, when approached in advance by another agency or department, Customs generally invite/intimate officers of other agencies for a joint inspection to be simultaneously conducted. But there is no certainty in such a situation that the joint inspection does take place as it is dependent on availability of designated officers of the other department. Our queries from the stake holders indicate that examinations by other departments are often not appropriately coordinated and carried out jointly, mainly because advance notice is not communicated to Customs and vice versa. Thus there is duplication of effort with consequential costs and delay to importer/exporter.

It has been learnt that at Sabmrial Dry Port, Anti-Narcotics Force (ANF) teams conduct examination of export cargo in process of clearance without prior notice. Similar practice has also been reported from other Collectorates. ANF teams also conduct examination of baggage of out-going passenger at Airports (Peshawar, Lahore, Islamabad, and Karachi) independently. In Karachi even export cargo of pharmaceutical products is re-examined by ANF teams independently after Custom's examination.

Plant Protection Department officials frequently visit airports/sea ports to inspect plants or plant products (imported or under export) but, except when importer coordinates with Customs, no joint inspection takes place.

Recently the 'Ready Made Garments Exporters Association' had represented to Collector of Customs (Export), Karachi to frame procedure for joint examination of their export consignments at sea port to be conducted in scheduled manner by Customs and ANF because independent inspections cause a lot of hassle, additional costs and pose threat to quality of export-bound consignments.

There is an exception as well. At Karachi Airport, Customs have, after deliberations with 'Trade Development Authority of Pakistan' (TDAP), 'Airport Security Force' (ASF) and the 'Jewelry Exporters Association', framed a procedure for conducting coordinated joint inspections of consignment being hand-carried (self-carried) by carriers (passengers). This has minimized hassle and costs of such inspections.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Yahya, Director - Customs Intelligence and Investigation, Karachi.
- Mrs. Zeba Haye Azhar, Collector of Customs (Appraisalment), Lahore.
- Mr. Irfan Javed, Additional Collector of Customs, Model Collectorate of Customs Appraisalment, Karachi.
- Dr. Mohammad Imran, Assistant Collector, AFU Exports, Karachi.
- Mr. Mohammad Zubair, Clearing Agent (CHA License No. 1453) AFU Exports Karachi.
- Mr. Ijaz A. Khokhar, Chief Coordinator & former Chairman, Pakistan Ready Made Garments Manufacturers and Exporters Association (PRGMEA), Karachi (Phone: 021-34547912, Cell: 0300-8617686)
- Mr. Inam Rehmani, Clearing Agent, (CHL No. 90), Customs House, Karachi (Phone: 021-32420026)
- Mr. Saqib Altaf, Importer, Karachi (Iltaf sons, Joria Bazar, Karachi deals in plastic rasin and artificial leather)
- Mr. Mir Zaman, Inspector of Customs (remained posted at Torkuhm Customs Station, for three years), MCC Peshawar.
- Dr. Sarfraz Warraich, Collector of Customs, MCC Sambrial.

**Conclusions:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendation:** It is recommended that the FBR/Customs may amend Sections 80, 131, 139 and 198 of the Customs Act requiring Customs to conduct, where necessary, joint examinations in coordination with other departments. Other relevant laws such as 'The Control of Narcotic Substances Act, (The CNSA), The Pakistan Animals Quarantine (Import and Export of Animals and Animal Products) Ordinance, The Drugs Act, The Pakistan Plant Quarantine Act, be amended, where required, to ask for and conduct joint inspections with Customs. Further, the FBR/Customs is recommended to frame procedures for joint inspections in co-ordination with other departments and in this regard to enter into appropriate mutual understandings with them.

3.36. Standard	The Customs shall consider request by the declarant to be present or to be represented at the examination of the goods. Such requests shall be granted unless exceptional circumstances exist.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 80, 198 and 199

**Discussion:**

*Law:* Examination of goods is conducted by Customs. Section 199 of the Customs Act requires that all arrangement to make goods available for examination is to be made by importer/declarant and to meet all expenses in this regard. Moreover, it further requires that if sample is to be drawn, the owner of the goods or his representative shall be present.

The examination itself is performed as per 'Import Examination Manual', maintained by Customs House Karachi, by the appropriate officer of Customs. This makes the process objective and forestalls risk to revenue.

As regards the One-Customs system, the declarant becomes aware of examination schedule as the processing of GD is being manually performed. Moreover, the officials require the declarant to arrange for presentation of goods for examination at the appointed time at his own cost. So in this system, the declarant or his agent is fully aware of the examination schedule and hence is more likely than not to be present during examination. The customs broker who represents the declarant is almost always present during examination.

It may be mentioned that presence of declarant or his representative helps in the process of examination and it will also obviate the potential controversy which may arise in relation to procedure actually followed during the subject inspection in absence of declarant.

The law is thus partially compliant in that under PACCS system law requires presence of importer or his representative only if sample is to be drawn (which PACCS system does not mention).

Under the PACCS (WeBOC) electronic system, the competent customs officer conducts examination under guidelines of this electronic system which does not allow issuance of formal notice to the declarant to be present. Perhaps the purpose is to avoid contact with declarant. PACCS has thus done away with physical presence of declarant or his representative at the time of examination.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Wajid Ali Deputy Collector of Customs, MCC Port Qasim, Karachi
- Mr. Inam Rehmani, C.H.L. No.90, 608 Business Plaza, Mumtaz Hassan Road, Customs Clearing Agent, Customs House, Karachi.
- Mr. Sarfaraz Warraich, Collector of Customs, MCC, Sambrial, Sialkot
- Mr. M. Abid. Assistant Collector, AFU, (MCC preventive), Karachi
- Mr. Ejaz khokhar, Chairman Readymade Garments Manufacturers and Exporters Association, (PRGMEA), Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendation:** Section 199 of the Customs Act may appropriately be amended to provide for acceding to the request of declarant to be present at the time of examination and/ or taking of samples, even in case Goods declaration is being processed through PACCS, subject to adherence by the declarant or his authorized representative to the timings of examination fixed by the Customs, failing which the examination of the goods shall be carried out in his absence. **In certain situations for example if the goods are under investigation or under suspicion etc. customs may refuse such a request.**

3.37.  
Standard

If the Customs deems it useful, they shall require the declarant to be present or to be represented at the examination of the goods to give them any assistance necessary to facilitate the examination.

**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 80, 108, 115, 131, 198 and 199.
- The Customs Rules; (Notification No. 450(I)/2001 dated 18-06-2001): Rule 433

**Discussion:**

*Law:* Section 199(I) of the Customs Act requires the declarant to be present at the time of examination and drawing samples. Subsection reads as under:

**199. Power to take samples of goods.** - (1) The appropriate officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs-area, take samples of such goods in the presence of the owner thereof or his agent or where the Customs Computerized System is operational in the presence of the custodian of the goods, for examination or testing or for ascertaining value thereof or for any other necessary purpose.

However, in case of processing of Goods declaration under the PACCS/ WeBOC system, the said provision requires only the presence of custodian of goods, when sample is to be drawn. Paragraph 12(4) of 'Import Examination Manual', Edition 1996, issued by Customs House, Karachi also provides for presence of owner at the time of taking samples.

Under One-Customs, as per general practice and because of the provisions of section 199(1) of the Act, requiring presence of importer or his Representative at the time of drawing samples, the declarant or his agent is usually present at the time of examination.

In case of PACCS, importer is not present as all work of presenting goods for examination has been assigned under section 199 of the Act to custodian/port operator.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Sarfaraz Warraich, Collector of Customs, MCC Sambrial, Sialkot.
- Syed Tanvir Ahmad, Collector Customs, MCC Port Qasim, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi.
- Mr. Qurban Ali Khan, Additional Collector of Customs AFU, MCC, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendations:** It is recommended that Section 199(1) of the Customs Act be amended to require importer or his nominees to be present at the time of examination and or taking samples, in case of processing a Goods declaration under the PACCS/ WeBOC system. Rule 435 of the Customs Rules, 2001 may also be amended to require importer or his nominees to be present at the time of examination and or taking samples. Furthermore, Paragraph 12(4) of 'Import Examination Manual', Edition 1996, issued by Customs House, Karachi may also be modified to provide for presence of owner at the time of examination of the goods.

3.38. Standard	Samples shall be taken only where deemed necessary by the customs to establish the tariff description and/or value of goods declared or to ensure the application of other provisions of national legislation. Samples drawn shall be as small as possible.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 80, 113, 133, 198, 199

**Discussion:**

*Law:* Section 199 of the Customs Act provides that;

**199. Power to take samples of goods:** The appropriate officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs-area, take samples of such goods in the presence of the owner thereof or his agent or where the Customs Computerized System is operational in the presence of the custodian of the goods, for examination or testing or for ascertaining value thereof or for any other necessary purpose.

In practice, for the purpose of making assessment, the Customs draw samples only when deemed necessary. Such samples are drawn in accordance with the Import Examination Manual (1996, Public Notice Number 37/95(A) dated 12-7-1995 issued by Model Collectorate of Customs (Appraisalment), Karachi) which determines the number of samples, size and volume of the particular goods and has fixed the upper limit of 1 kg for solids, 1 Liter for liquids generally and 100 ml for solvent, essential oils and vegetable oil and 1 linear yard full width of paper and textiles. Samples are to be drawn in duplicate as per instructions in the Manual on page 11. In case of warehoused goods, the procedure of taking of samples is no different except that the removal of sample is to be recorded in the register of Bonds under section 113 of the Act.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad.
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendations:** Samples are drawn only when necessary however, there is no mention of this fact in the Import Examination Manual. The manual and the law therefore need to be amended to state that samples should only be drawn for example for determining the PCT code, rate of duty and of duty and accuracy of declaration etc. Sometimes the samples are drawn so that the assessing officer who is not present at the time of examination can physically see the goods. However, detailed guidelines need to be issued so that this power is not misused by customs examining officer.

3.39. Standard	The Customs shall not impose substantial penalties for errors where they are satisfied that such errors are inadvertent and that there has been no fraudulent intent or gross negligence. Where they consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose.
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**Overall Assessment:** Not compliant

**Relevant Law:**

- The Customs Act; Sections 32 & 156(1) (14)

**Discussion:**

*Introductory note:* The Standard also enunciates that where Customs consider it necessary to discourage a repetition of such errors, a penalty may be imposed but shall be no greater than is necessary for this purpose.

*Law:* Section 32 of the Customs Act deals with false statement and errors, though it distinguishes the error made knowingly or by reason of some collusion [Section 32 (2)] from the error made inadvertently or misconception [Section 32 (3)], but the penal provision thereof under Section 156(1) (14) does not differentiate between the sub-sections. The limit of punishment for both categories of offenses, therefore, remains the same.

Since, the substantive provisions of law distinguishes between offences on the basis of their nature, the penal provision should also be different keeping in view the glaring distinction between an inadvertent error and errors arising from fraudulent intent or gross negligence.

It is, thus, appropriate that Sub-Section(3) of Section 32 may be removed from this section and converted into a new Section 32 A and a corresponding amendment in Section 156(1)(14) of the Act may be made to provide independent lighter penalty, commensurate with short payment of duty and tax due to inadvertence or error.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Qurban Ali Khan, Additional Collector of Customs MCC, Islamabad.
- Mr. Saeed Khan Jadoon, Additional Collector of Customs MCC, Peshawar.
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendation:** It is, therefore, recommended that Sub-Section (3) and (3A) of Section 32 of the Act be removed from this section and be made into a new section and a corresponding amendment in Section 156(1) (14) *ibid* may also be made to provide that such minor errors should either be let off with warning or token penalties, commensurate with the lighter offence/ short payment of duty and tax due to inadvertence or error.

3.40. Standard	<p>Goods declared shall be released as soon as the customs have examined them or decided not to examine them, provided that:</p> <ul style="list-style-type: none"> <li>– No offense has been found;</li> <li>– The import or export license or any other documents required have been acquired;</li> <li>– All permits relating to the procedure concerned have been acquired; and</li> <li>– Any duties and taxes have been paid or that appropriate action has been taken to ensure their collection.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 82 and 131

**Discussion:**

*Law:* Once assessment of goods has been completed by Customs, without examination or after conducting examination of goods, and duty/taxes leviable have been paid or secured (as per prescribed procedure), the goods are approved as “out-of-charge” by the Customs. The owner is then free to take the goods out of the port, airport and warehouse or Customs station.

In practice, importer is not obstructed in release of goods after finalization of assessment, payment of duties and taxes, and payment of port charges, etc.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Qurban Ali Khan, Additional Collector of Customs MCC, Islamabad.
- Mr. Saeed Khan Jadoon, Additional Collector of Customs MCC, Peshawar.
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:**

<p>3.41. Standard</p>	<p>If the Customs are satisfied that the declarant will subsequently accomplish all the formalities in respect of clearance they shall release the goods, provided that the declarant produces a commercial or official document giving the main particulars of the consignment concerned and acceptable to the Customs, and that security, where required, has been furnished to ensure collection of any applicable duties and taxes.</p>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 81
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**Discussion:**

*Law:* Section 81 stipulates a mechanism for provisional determination of duty when the Customs cannot finalize assessment immediately after filing of GD as the goods require examination or laboratory test or due to some other cogent reasons. Thus, early release of goods may be sought for home consumption. The procedure is that the importer pays duty and taxes on the basis of the provisional assessment of duty and furnishes security either in shape of a bank guarantee or pay order or a post-dated cheque of a scheduled bank along with an indemnity bond, for the payment of additional amount of duty, as the said officer deems sufficient to meet the likely differential between the final determination of duty over the amount determined provisionally to the authorities that if, on finalization of assessment, higher duties and taxes are payable, he shall pay the same.

As per provisions of Sub Section (2) thereof, Customs are required to finalize assessment within six months of such provisional assessment from the date of filing of Goods declaration.

Section 81 reads as under:

**81. Provisional determination of liability:**

- 1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79, for reasons that the goods require chemical or other test or a further inquiry, may an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally; Provided that the importer, save in the case of goods entered for warehousing, pays such additional amount on the basis of provisional assessment or furnishes bank guarantee or pay order or a post-dated cheque of a scheduled bank along with an indemnity bond for the payment thereof as the said officer deems sufficient to meet the likely differential between the final determination of duty over the amount determined provisionally:

Provided further that there shall be no provisional assessment under this section if no differential amount of duty and tax is paid or secured against bank guarantee or pay order or post-dated cheque.

- 2) Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within six months of the date of provisional determination:

Provided that the Collector of Customs or, as the case may be, Director of Valuation, may in circumstances of exceptional nature and after recording such circumstances, extend the period for final determination which shall in no case exceed ninety days:

Provided further that any period, during which the proceedings are adjourned on account of a stay order or for want of clarification from the Board or the time taken through adjournment by the importer, shall be excluded for the computation of aforesaid periods.

- 3) On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.
- 4) If the final determination is not made with the period specified in sub-section (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination.
- 5) On completion of final determination under sub-section (3) or (4), the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be.

**Explanation:** Provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or post-dated cheque.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad.
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:**

3.42. Standard	When the Customs decide that they require laboratory analysis of samples, detailed technical documents or expert advice, they shall release the goods before the results of such examination are known, provided that any security required has been furnished and provided they are satisfied that the goods are not subject to prohibitions or restrictions.
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**Overall Assessment:** Partially Compliant

**Relevant law:**

- The Customs Act; Section 81

**Discussion:**

*Introductory note:* The standard requires that when Customs decide that they need laboratory analysis of samples, detailed technical documents or expert advice, they shall release the goods before the results of such examination are known, provided that any security required has been furnished and provided that the goods are not prohibited or restricted.

*Law:* The aforesaid requirements of this Standard are also covered under Section 81 of the Customs Act except goods meant for warehousing. The relevant provisions of Section 81 of the Act are as follows:

**81. Provisional determination of liability:**

- 1) Where it is not possible for an officer of Customs during the checking of the goods declaration to satisfy himself of the correctness of the assessment of the goods made under section 79, for reasons that the goods require chemical or other test or a further inquiry, an officer, not below the rank of Assistant Collector of Customs, may order that the duty, taxes and other charges payable on such goods, be determined provisionally:

Provided that the importer, save in the case of goods entered for warehousing, pays such additional amount on the basis of provisional assessment or furnishes bank guarantee or pay order or a post-dated cheque of a scheduled bank along with an indemnity bond for the payment thereof as the said officer deems sufficient to meet the likely differential between the final determination of duty over the amount determined provisionally:

Provided further that there shall be no provisional assessment under this section if no differential amount of duty and tax is paid or secured against bank guarantee [or pay order] or post-dated cheque.

- 2) Where any goods are allowed to be cleared or delivered on the basis of such provisional determination, the amount of duty, taxes and charges correctly payable on those goods shall be determined within six months of the date of provisional determination:

Provided that the Collector of Customs or, as the case may be, Director of Valuation, may in circumstances of exceptional nature and after recording such circumstances, extend the period for final determination which shall in no case exceed ninety days.

Provided further that any period, during which the proceedings are adjourned on account of a stay order or for want of clarification from the Board or the time taken through adjournment by the importer, shall be excluded for the computation of aforesaid periods.

- 3) On completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.

- 4) If the final determination is not made with the period specified in sub-section (2), the provisional determination shall, in the absence of any new evidence, be deemed to be the final determination.
- 5) On completion of final determination under sub-section (3) or (4), the appropriate officer shall issue an order for adjustment, refund or recovery of amount determined, as the case may be.

**Explanation:** Provisional assessment means the amount of duties and taxes paid or secured against bank guarantee or post-dated Cheque.

In practice this system has operated without difficulty to importers and without revenue loss to the exchequer. This is a routine practice in all Custom Houses.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC, Islamabad.
- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Arif Moton, Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Issac Ali Qazi, Advocate Supreme Court, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice is partially in compliance with the Standard.

**Recommendations:** Section 81 should be suitably amended to include the commercial or other documents required that the fact that this will not be allowed where the requirements of other laws and regulations have to be complied with. Examples of this would be health and plant protection requirements etc.

3.43 Standard	When an offense has been detected, the Customs shall not wait for the completion of administrative or legal action before they release the goods, provided that the goods are not liable to confiscation or forfeiture or to be needed as evidence at some later stage and that the declarant pays the duties and taxes and furnishes security to ensure collection of any additional duties and taxes and of any penalties which may be imposed.
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**Overall Assessment:** Non-compliant

**Relevant Law:**

- The Customs Act; Sections 81, 179, 180 and 186 read with section 156

**Discussion:**

*Introductory note:* The Standard requires that when goods, while lying at a port or Customs station are detained due to apparent violation and have to pass through adjudication process, the same be provisionally released. However, the Customs Act does not provide for it and therefore the goods have to remain under detention till the case is adjudicated.

Cases of violations are dealt with through *quasi-judicial* adjudication process, which involves preparing a statement of charges (of violations), issuing a notice to declarant/importer to show cause why penal action should not be taken, giving opportunity of defense/hearing and passing of an adjudication order which is appealable. The penal action may also involve confiscation of goods. Goods are not allowed to be released before the Adjudication Order is issued. The law does not provide for it.

In practice, the adjudication process is, in most cases expedited by Customs. Nonetheless there is no surety that the imported goods will not remain in detention for a long time depending on the nature of offence.

*Law:* The offences are mentioned in Section 156(1), the goods are generally liable to confiscation and then the offending goods are allowed to be redeemed by giving an option to pay fine in lieu of confiscated goods.

**181 Option to pay fine in lieu of confiscated goods:** Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit.

**Explanation:** Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods.

Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given:

Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under section 16, or any other law for the time being in force.

**223. Officers of Customs to follow Board's order, etc:** All officers of customs and other persons employed in the execution of this Act shall observe and follow the orders, instruction and direction of the Board:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the appropriate officer of customs in the exercise of their *quasi-judicial* function.

*Practice:* The law and practice, both are not in compliance with the Standard. In fact the two sections of Customs Act are contradictory in nature as is very obvious from the simple reading of the two sections. Section 181 permits FBR to order the customs officers to follow the orders of the Board in case of adjudication and the other order forbids FBR to do so. This has created lot of controversy and confusion. This obviously needs to be corrected.

However, sometimes genuine cargo consignments may become subject to one or more violations. Such merchandise/machinery or equipment at port or Custom stations is under constant threat of deterioration and revenue involved is delayed and at risk.

Pragmatically viewed, it is in the in larger public interest to allow such goods to be provisionally released pending adjudication subject to conditions including furnishing of security as FBR may prescribe.

Accordingly, it is recommended that in the Customs Act, a new provision may be added for provisional release of goods involved in any alleged violation, if not banned/ restricted/ notified under section 16, provided that the owner furnishes security to satisfaction of authority on fulfillment of other conditions as may be prescribed by FBR.

**Conclusion:** Based on the above research, it appears that the law and practice is not in compliance with the Standard.

**Recommendations:** A) Section 179 of the Customs Act may be modified to empower adjudicating authority to allow provisional release of the imported goods, detained/seized in a case under adjudication, but not involving outright confiscation or forfeiture, if not banned/ restricted/ notified under Section 16, subject to furnishing of a security either in shape of a bank guarantee or pay order or a post-dated cheque of a scheduled bank along with an indemnity bond, for the payment of additional amount of duty, as the said officer deems sufficient to cover the amount of duties and taxes involved subject to the proviso given above. Further, Section 181 and 223 also need to be modified wherein, the confusion/conflict apparent in the law and also to make the law transparent by specifying the conditions under which the customs officers/ adjudication officers will be permitted to release such goods before the completion of the process of adjudication.

3.44. Standard	<p>When goods have not yet been released for home use or when they have been placed under another Customs procedure, and provided that no offense has been detected, the person concerned shall not be required to pay the duties and taxes or shall be entitled to repayment thereof:</p> <ul style="list-style-type: none"> <li>– When, at his request, such goods are abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Any costs involved shall be borne by the person concerned;</li> <li>– When such goods are destroyed or irrecoverably lost by accident or force majeure, provided that such destruction or loss is duly established to the satisfaction of the Customs;</li> <li>– On shortages due to the nature of the goods when such shortages are duly established to the satisfaction of the Customs.</li> <li>– Any waste or scrap remaining after destruction shall be liable, if taken into home use or exported, to the duties and taxes that would be applicable to such waste or scrap imported or exported in that state.</li> </ul>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 27, 27A and 201.

**Discussion:**

*Law:* Section 27(1) of the Customs Act stipulates that on request of declarant a competent authority may examine and reduce the value of goods if the same have been damaged or their value has diminished due to deterioration. It is reproduced herein below;

**27. Abatement allowed on damaged or deteriorated goods:**

- 1) If before the examination of any imported goods the owner thereof informs an officer of Customs not below the rank of Assistant Collector in writing that the value of the goods as declared in the goods declaration has diminished as a result of some damage or deterioration sustained by them before or during unloading at the port of destination, an officer of Customs not below the rank of Assistant Collector may appraise the value of the damaged or deteriorated goods in the manner given in sub-section (2) and the owner shall be allowed abatement of duty in proportion to the diminution of value so appraised, whether duty is leviable ad valorem or otherwise.
- 2) For the purposes of this section, the value of damaged or deteriorated goods may be ascertained by either of the following methods at the option of the owner:-
  - a) Value may be appraised by an Officer of Customs not below the rank of Assistant Collector on the basis of physical examination of the goods; or
  - b) Such goods may be sold by public auction or by tender or, with the consent of the owner, in any other manner and the gross sale proceeds shall be deemed to be the value of such goods inclusive of duties.

Section 201 of the Act provides that goods which are abandoned may be auctioned or sold in a manner to which declarant agrees and the sale proceeds be applied to cost of transportation and sale, to duty and taxes and finally, the balance be given to the owner.

Section 27A of the Act provides that if goods are destroyed or scraped or otherwise rendered without commercial value, duty shall be collected on sale of waste or scrape left behind as if such waste or scrape was imported.

Grant of abatement due to deterioration and disposal of abandoned goods as per laid down procedure have not posed any difficulties to importers, Customs or buyers. The practice is thus

compliant with the Standard. Despite efforts and making contacts, the extent of abatement given in such consignments at any given station, however, could not be ascertained except one case mentioned by a resource person, relating to the Model Collectorate of Customs, Appraisement Karachi, breakage of wind-screens of cars was ascertained to be 30% and therefore, the declared transaction value of the consignment was appraised to have been diminished proportionately for the purpose of allowing abatement in the leviable duties and taxes.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Moeenuddin Wani, Additional Collector of Customs, MCC, Islamabad.
- Mr. Humayun Zafar, General Manager, Customs Operations, PRAL, FBR, Islamabad.
- Mr. Javaid Iqbal Butt former Deputy Collector Customs (Legal), MCC Appraisement Custom House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:** In this case the law is compliant but in our opinion this needs further clarity. It is therefore recommended that the fact of deterioration or destruction of the goods should be further elaborated in the law so that it does not leave any direction with the customs officers to make such determination. This will also help the trade in that they will know exactly about their rights. Furthermore, the law should also cover the situation/s where the goods have been examined and the deterioration or destruction takes place after such examination.

3.45. Transitional Standard	When the customs sell goods which have not been declared within the time allowed or could not be released, although no offense have been discovered, the proceeds of the sales, after deduction of any duties and taxes and other charges and expenses incurred, shall be made over to those persons entitled to receive them or, when this is not possible, held at their disposal for a specified period.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 201(2)

**Discussion:**

*Introductory note:* This Standard enunciates that when the Customs sell (in Pakistan Customs regime, it is known as 'disposal or auction of ') goods which have not been declared within the time allowed or could not be released, although no offense has been discovered, the proceeds of the sales, after deduction of any duties and taxes and other charges and expenses incurred, shall be made over to those persons entitled to receive them or, when this is not possible, to be held at their disposal for a specified period.

*Law:* Section 201(2) of the Customs Act provides that sale proceeds shall be applied in their respective order. Firstly, the expenses of the sale are paid including the freight and any other charges applicable. Secondly, the custom-duty shall also be paid including all other taxes payable to the Federal Government in respect of such goods. Then payment is made to the person holding the goods in custody. The balance shall be paid to the owner of the goods provided he applies for it within six months of the sale of the goods or show sufficient cause for not doing so.

The practice is also in accordance with law and the sale proceeds are apportioned, accordingly.

Despite efforts and making contacts, the exact details of payments in such cases at any given station could not be ascertained. However, there is a concrete case of a container load of relief goods for flood affectees of 2010 sent by US donors was abandoned by consignee due to delays in clearance process. When auctioned by Customs, after adjustment of duties, taxes and port charges, there was no balance of sale proceeds left which could be paid to the consignee.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Irfan Javaid, Additional Collector of Customs, MCC (Appraisalment), Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Tod Shea, CEO, Comprehensive Disaster Response Services (CDRS) F-11/2, S. No.26, H No. 80, Islamabad, Pakistan

**Conclusion:** Based on the above research, it appears that the law and practice is in compliance with the Standard.

**Recommendations:**

## Chapter 4: Duties and Taxes

4.1. Standard	National legislation shall define the circumstances when liability to duties and taxes is incurred.
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**Overall Assessment:** Compliant

### Relevant Law:

- The Customs Act: Sections 18, 18A, 18C, 30, 104, 131, 139 and 145.
- Sales Tax Act.
- Income Tax Ordinance.
- Federal Excise Act

### Discussion:

*Law:* Section 18(1) of the Customs Act provides for the levy of customs duties on goods imported into Pakistan at rates specified in the First Schedule to the Act.

Section 18 (4) and Section 18 (5) empower the Federal Government to levy, respectively, a regulatory duty on goods imported or exported and an additional duty on goods imported, provided that the total incidence of all duties shall not exceed rates agreed by the Government under multilateral agreements. Section 18A also provides for the levy of a special duty on imported goods not exceeding the rate of excise on the same goods manufactured in Pakistan. Under section 18(2) of the Act, no duty shall be levied on goods exported from Pakistan. Duties are required to be levied when goods are cleared by Customs for entry into consumption in Pakistan.

In the case of baggage of passengers and parcel post, the liability is created as soon as the item enters the country under the provisions of Sections 139 and 144 of the Customs Act, and the provisions of the Sales Tax Act, the Income Tax Ordinance and the Federal Excise Act.

The rate of duty applicable to any imported goods is the rate in force on the day when the GD is filed under the provisions of applicable section (Section 79, 104, 131, 140 or 145) of the Customs Act.

In the case of sales taxes, federal excise taxes and withholding taxes, the Sales Tax Act, the Federal Excise Act and the Income Tax Ordinance, respectively specify the circumstances for the levy, assessment and collection of each tax. These laws have provisions to the effect that, in the case of imported goods, these taxes and duties shall be levied, assessed and collected in the same manner and at the same time as the levy, assessment and collection of customs duties under the Customs Act.

Section 19 of the Customs Act provides that the Federal Government may grant by notification in the Official Gazette exemptions from the levy of customs duties in part or in full. Section 21 provides that the FBR may allow the delivery or release of temporarily imported goods, subject to such conditions as may be prescribed, without the payment of duty; Section 21 also provides for the repayment of duties on imported goods that are used in the manufacture of goods meant for export. Section 27 of the Act provides for the abatement of the amount of duties owed when the concerned goods have diminished in value due to certain conditions; e.g., fire, degradation, damage by water, etc.

*Practice:* According to the interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Ghulam Mustafa Malik, Tax Manager, Naubahar Bottling Company, Gujranwala.
- Mr. M. Amin Bhatti, General Manager Finance, Haideri Beverages Industrial triangle, Kahuta Road, Islamabad.
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are deemed necessary at this time.

4.2. Standard	The time period within which the applicable duties and taxes are assessed shall be stipulated in national legislation. The assessment shall follow as soon as possible after the Goods declaration is lodged or the liability is otherwise incurred.
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**Overall Assessment:** Not Compliant

**Relevant Law:**

- Customs Act; Section 79(1)(b), 80, 82

**Discussion:**

*Law:* There are no specific provisions in national legislation specifying the time period within which an assessment of duties and taxes is to be made. Therefore Pakistan's customs regime is not in compliance with the first sentence of the standard. Unlike the first sentence of the standard, the second sentence does not, strictly interpreted, impose an obligation relating to the content of national legislation; only that the assessment is to be made as soon as possible after the GD is lodged or the liability incurred. Nevertheless, it is still advisable that national legislation contain a provision to this effect.

It should be noted that one provision of the Customs Act has some relevance to the subject of the standard. Section 79(1) (b) of the Customs Act provides that if the importer is a registered user of the Customs Computerized System, the assessment based on the GD is to take place in real time and the payment of duties and taxes are to be paid immediately on-line.

*Practice:* Customs has implemented, through the PACCS system, a self-assessment system for the majority of importers. Submission of GDs, self-assessment and payment occur at the same time – and are required to occur within 15 days of goods arrival. However, the standard requires that all importers, not just those using the PACCS system, are required to prompt assessment, as soon as possible after the GD is lodged or the liability is otherwise incurred, and that national legislation specify a time limit within which such assessment is to occur.

**Conclusion:** Based on the above, it appears that the law is not in compliance with the standard. National legislation does not impose a time limit within which Customs is required to make the assessment of duties and taxes. And, for importers not using the PACCS system, there is no requirement or practice that meeting the standard's requirement that an assessment is to follow as soon as possible after the GD is lodged or the liability is otherwise incurred.

**Recommendation:** Section 80 of the Act should be amended to require Customs to complete the assessment as soon as possible but in no case more than 5 days after the Goods Declaration is filed.

4.3. Standard	The factors on which the assessment of duties and taxes is based and the conditions under which they are determined shall be specified in national legislation.
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## Overall Assessment: Compliant

### Relevant Law:

- The Customs Act; Chapter V;
- Pakistan Customs Tariff (the First Schedule to the Customs Act);
- Customs Rules, Chapter IX;
- Rules of Origin, 1973;
- Sales Tax Act;
- Income Tax Ordinance; and
- Federal Excise Act.

### Discussion:

*Introductory note:* The standard imposes an obligation on the content of national legislation. The standard requires that national legislation specify (1) the factors on which the assessment of duties and taxes will be based, and (2) the conditions under which those factors will be determined.

*Law:* The factors on which the assessment of duties and taxes is based (classification, origin, rate of duty or tax, value/quantity) are set forth in the above-referenced pieces of relevant legislation. It should be noted that the Pakistan Customs Tariff (PCT) contains a set of general rules on interpretation that, *inter alia*, requires that the PCT be interpreted in accordance with the WCO's Explanatory Notes to the Harmonized Commodity Description and Coding System (2012 version). In addition, the Chapter V of the Customs Act specifies the conditions under which the concerned factors are to be determined.

*Practice:* The standard imposes an obligation on the content of national legislation and is not relevant to practice issues. Nevertheless, we note that, despite the advanced and elaborate legal framework for determining the classification origin and value of goods, implementation has been difficult. Consistency of application has not been achieved. It is reported that, on several occasions, the determination of the transaction value of different shipments of similar goods from the same country by the same supplier had materially different outcomes. Importers, clearing agents and advocates/consultants (who deal with the disputes regarding assessment) consider that the authorities exercise their powers in a wide band of discretion, sometimes being very strict in application of law and sometimes overly flexible.

From our discussions with stakeholders and the Resource Persons below, it is apparent that the business community has insufficient knowledge of applicable laws and procedures, and that importers need to improve their understanding of the rules governing the assessment of duties and taxes. Likewise, the Customs should arrange training for Customs officers on these matters.

### Resource Persons:

- Mr. Ghulam Mustafa Malik, Tax Manager, Naubahar Bottling Company, Gujranwala.
- Mr. M. Amin Bhatti, General Manager Finance, Haideri Beverages Industrial triangle, Kahuta Road, Islamabad.
- Mr. Wajid Ali, Deputy Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law is in compliance with the standard. Although the standard does not speak to practice issues, it is important to note serious implementation issues have been identified.

**Recommendations:** To promote consistency of application, Customs should arrange training for Customs officers on the proper methods for determining the various factors affecting the assessment of duties and taxes.

4.4. Standard	The rates of duties and taxes shall be set out in official publications.
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**Overall Assessment:** Compliant

**Relevant Law:**

- Pakistan Customs Tariff (the First Schedule to the Customs Act).
- The Sales Tax.
- The Income Tax Ordinance.
- The Federal Excise Act (First Schedule to Federal Excise Act).

**Discussion:**

*Law:* The schedule of duties and taxes have been published in the official gazette and are also available in book form sold by Customs and private sector publishers; and are immediately made available on the FBR/Customs website.

Rates of duties and taxes are amended in the budget law (Finance Act) and announced in the National Budget. Such amendments are published in the official Gazette and placed on FBR's website. Annotated versions of legislation and the Pakistan Customs Tariff are regularly published by the private sector.

A number of institutions and business associations arrange seminars on changes in rates and duties in which Customs participate to explain the impact and import of the changes.

*Practice:* The Tariff Schedule is available on the FBR website at <http://download1.fbr.gov.pk/Docs/201210916104244605CustomsTariff.pdf>

**Conclusion:** Based on the above, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are deemed necessary at this time.

4.5. Standard	National legislation shall specify the point in time to be taken into consideration for the purpose of determining the rates of duties and taxes.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 30, 30A, 31, 31A, 79, 104, 131, 139, 140, 144, and 145

**Discussion:**

*Law:* Section 30 of the Customs Act, 1969 provides that rate of duty applicable to any goods shall be the rate in force on the day when Goods Declaration for home consumption is filed under Section 79 of the Act on arrival of goods or under Section 104 *ibid* from a bonded warehouse. In the latter case if duty is not paid in seven days, the applicable rate shall be the one in force on the day when duty is paid. Certain other possible specific situations are also covered by this section for specifying the time to assess duties and taxes.

In case of baggage, Section 140 of the Act determines the applicable rate as the rate in force on the day when a baggage declaration is filed under Section 139 of the Act. In case of parcel post, Section 145 specifies the rate to be that in force on the date on which the postal authorities present the GD to Customs.

Section 30A provides for specifying the time when a GD is made through the Customs Computerized System. Section 31 deals with exports which are presently not liable to customs duties.

*Practice:* These provisions are regularly applied, have acquired wide acceptance, and have been reviewed in detail by Superior Courts.

On the day(s) when the rates of duties taxes are likely to change (i.e. annual budget announcement) the government takes necessary measures to obtain additional security from importers to cover any increase in rates. In general, the rate payable in case of a tariff change is the rate payable as of midnight on the date the change is announced.

**Conclusion:** Law and practice are in compliance with the Standard.

**Recommendation:** No recommendations are considered necessary.

4.6. Standard	National legislation shall specify the methods that may be used to pay the duties and taxes.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The State Bank of Pakistan Act, 1956.
- Controller General of Accounts Ordinance, 2001
- The Constitution of Islamic Republic of Pakistan, 1973, Article 78
- The Customs Rules, 2001, SUB-CHAPTER XI of CHAPTER XXI issued wide SRO 450(I)/2001 dated 18-06-2001.

**Discussion:**

*Law:* The methods to be used for paying duties and taxes are duly given in the national legislation. Under the Constitution all revenues received by Federal Government are part of the 'Federal Consolidated Fund'. The State Bank of Pakistan (SBP) has authorized the National Bank of Pakistan (NBP) to receive customs duty and taxes on behalf of the Government and transfer them to the SBP on a daily basis. Most goods are now cleared through the electronic system called Pakistan Customs Computerized System (PACCS). Payment is made online through an NBP branch from the importer's deposit credits directly when the GD is filed under PACCS. This Pre-pact Procedure is provided for in Customs Rules 532 to 534 of SRO 450(I)/2001. Operational details are available online. The system is working smoothly. For reference, the relevant rules are reproduced below:

**532. Pre-pact procedure:** The pre-pact procedure hereinafter specified and facilities created there under shall, in view of the fixed banking hours, provide a round-the-clock online facility to the tax payers to discharge their legal liabilities accruing out of clearance of goods through PACCS.

**533. NBP to provide pre-pact facility:** A common account in the name of the Collector, Model Collectorate of Customs, shall be opened and maintained at any branch of the National Bank of Pakistan (NBP) designated by PACCS wherein all users may deposit any amount they may like to and, in relation thereto, the bank branch shall electronically communicate the amount and the particulars of the depositor to PACCS on line.

**534. Payments through pre-pact:** Where any payment is required to be made through pre-pact, PACCS shall communicate the particulars like NTN, BL. No., Tax Code, Account Heads, relevant sub -totals and grand total to the National Bank of Pakistan, which shall transfer equivalent amount from pre-pact to the relevant heads of account."

To further facilitate importers in payment of duty and taxes, NBP and Customs have allowed importers to maintain deposit credits in their accounts in the bank's branch dealing with Customs Collectorates at Karachi. NBP is authorized to receive duties and taxes from passengers at all airports in respect of accompanied as well as un-accompanied baggage. Payments under the system of 'One-Customs' become due when duties and taxes are assessed and recorded by Customs on the GD.

Forms for payments are available with bank branches and importers can have these in advance of having filed GD or on final assessment of duties and taxes by Customs.

*Practice:* The practice is as per law and is in partial compliance with the standard.

**Resource Person:**

- Mr. Zulfiqar Ahmad Kazmi, Collector of Customs, MCC, Peshawar.
- Mohammad Akram Chaudary, Additional Collector, MCC, Faisalabad.
- Dr. M. Asif Jah, Additional Collector, MCC, Preventive, Lahore.

- Agha Shahid Majeed, Additional Collector, MCC PACCS, Karachi.
- Mr. Shanshah Husnain, Additional Collector MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the standard.

**Recommendation:** The different instruments for payment of goods outside of PACCS should be clearly indicated in the relevant law/rule e.g. cash, pay order, credit card etc.

## 4.7 Standard

National legislation shall specify the person(s) responsible for the payment of duties and taxes.

**Overall Assessment:** Substantially Compliant

### Relevant law:

- The Customs Act; Sections 79, 81, 82, 83, 104, 131 and 139.

### Discussion:

*Law:* The provisions of section 79 of the Customs Act identify the owner of the imported goods to be responsible for payment of duties and taxes. Likewise section 82 of the Act specifies the owner of the goods for clearance, warehousing or transshipping or exporting or removing thereof. Section 83, makes the owner responsible for clearance of goods for home consumption, on payment of import duty and other charges. Section 131 of the Act also refers to the owner of the goods, responsible for payment of his liability of duty, taxes and other charges, if any. Even under section 139 thereof, owner of baggage is required, for the purposes of clearing it, to make a declaration of contents of the baggage. However, section 81 of the Act, which relates to provisional release of goods on declared value/classification basis, specifies importer and does not mention the owner.

The law is substantially compliant. But for the sake of consistency, section 81 of the Act requires to be amended so that the word importer is substituted for the word 'owner'.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practices follows the law.

### Resource Persons:

- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi
- Dr. Sarfaraz Waraich, Collector of Customs, MCC, Sambrial, Sailkot

**Conclusion:** Based on the above research, it appears that the law and practice are in substantial compliance with the standard.

**Recommendations:** It is, therefore, recommended that section 81 of the Customs Act, may be amended to substitute the word "importer" with the word 'owner' wherever occurring in that section.

Or

Sections 79, 80, 82 and 83 may be amended to replace the word "owner" with the word "importer".

4.8. Standard	National legislation shall determine the due date and the place where payment is to be made.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 82 and 83.

**Discussion:**

*Law:* An importer shall enter goods within 15 days of arrival of the goods at a customs station by filing a GD (Section 79(1)(a) of the Act). A registered user of the Customs Computerized System shall also assess their liability for duties and taxes and make payment of the assessed amount when filing their GD online (Section 79 (1)(b) of the Act).

If payment is delayed by more than ten days from date of assessment, the importer is liable to a surcharge of KIBOR plus three percent per year (Section 83 (2) of the Act).

If payment of duties is not made within 20 days of the arrival of the goods Customs may take the goods into custody under section 82 of the Act for auction.

As regards the place where payment is to be made, the Pakistan Treasury Rules has authorized the National Bank of Pakistan (NBP) to be a collecting agent. The State Bank of Pakistan (SBP) has nominated over 250 branches of NBP in the country where payment of customs duties, taxes and surcharges can be made. Furthermore, as discussed under Standard 4.6 above, most GDs are filed through the PACCS system and the taxes and duties are paid online to the National Bank of Pakistan under rules 532 to 534 of the Customs Rules.

*Practice:* According to interviews with the resource persons listed below, it appears that Customs practices follow the law.\*

At airports, bank booths authorized to receive payment of duty and taxes from passengers on their dutiable baggage items to facilitate them, are also operating smoothly.

**Resource Persons:**

- Mr. Mohammad Yaqoob Mako, Additional Collector of Customs, Karachi Airport, MCC Karachi.
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad.
- Mr. Abdul Waheed Khan (former Collector of Customs), Consultant (Customs) Karachi.
- Mr. Javed But, Former Deputy Collector of Customs, MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law does not define the due date for payment of duties and taxes. Section 79(1) requires entry of goods within 15 days of arrival – entry involves a series of actions and approvals of which payment is one action. Section 83 imposes an interest surcharge on unpaid duties and taxes ten days after assessment – however, as the discussion of Standard 4.2 above indicates, the time period for assessment of duties and taxes is also not determined in the Law. Also, the date from which a surcharge is applied not define that date as being the due date for payment of the underlying duties and taxes. The law is silent concerning the due payment dates because, in practice the majority, if not all, importers are registered users of PACCS, and therefore, file, self-assess and pay duties and taxes at the same time and online.

The Customs Act should refer to the Treasury Rules authorizing the BNP to collect duties and taxes.

**Recommendations:**

It is recommended that

- I. The Customs Law is amended to define a due date for payment of duties and taxes;
- II. A reference to the relevant treasury rule authorizing agents to collect payment of duties and taxes should be added to the Customs Act.

4.9. Standard	When national legislation specifies that the due date may be after the release of the goods, that date shall be at least ten days after the release. No interest shall be charged for the period between the date of release and the due date.
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**Overall Assessment:** Non-Compliant

**Relevant Law :**

- The Customs Rules; Rules 43 to 48.

**Discussion:**

*Law:* The Customs Act, 1969, has not specified a due date for payment of duty occurring after release of goods. However, Rule 46(6) of the Customs Rules, 2001 provides that 'the importer of urgent consignment shall, at the time of the prior release of such goods, present a bill of entry for home consumption and other necessary documents to the appropriate officer and shall pay the whole or differential amount of leviable duties, if any, within ten days of the prior release on the basis of which the appropriate officer shall finalize the provisional assessment.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource Persons:**

- Mr. A.C AFU, MCC (Preventive), Karachi.
- Mr. Farooque Tehsin, Former Superintendent AFU, MCC (Preventive), Lahore.
- Mr. Muazzam Jah, Deputy Collector of Customs, AFU, MCC (Preventive), Lahore.
- Mohammad Asrar Khan, Principle Appraiser AFU, MCC, Islamabad.

**Conclusion:**

This rule is not in compliance with the Standard as it only provides for payment of duty after release of goods for urgent consignments on a transaction-by-transaction basis rather than as periodic payments for ongoing transactions. Furthermore, the duty on an urgent consignment, if approved for early release, should be paid within ten days of release. The standard requires payment at least ten days after release.

**Recommendations:**

4.10. Standard	National legislation shall specify the period within which the Customs may take legal action to collect duties and taxes not paid by the due date.
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**Overall Assessment:** Compliant

**Relevant Law :**

- The Customs Act; Sections 82 and 202.
- The Customs Rules; Rules 133 to 215A of Chapter XI.

**Discussion:**

*Law:* The provisions of section 80 of the Customs Act require that if any goods are not cleared for home consumption etc. within twenty days of arrival, the same may be taken over to be auctioned after due notice to the owner/agent or shipping agent.

In case of deferment of duty under section 21A of the Act empowers FBR to make rules prescribing conditions for deferment of duty in general cases or by a special order in any particular case. Such conditions require furnishing of securities in respect of deferred amount. In case of default the security can be enforced and encashed.

In case of default/failure to satisfy conditions of exemption, the Customs resort to enforcement of these securities under section 202 of the Act which provides and also prescribes procedure under the Customs Rules, (Rules 133 to 215A) for collection and recovery of arrears from defaulting person through deduction of the same from a refund claim or any other money which such person may have with FBR/Customs, or through detaining and sale of other goods belonging to such person or through attachment and sale of his property (moveable and immovable).

In many cases relating to conditional exemptions granted by Federal Government from duty/taxes, importer is required to furnish securities such as bank guarantee, postdated cheque, indemnity body, corporate guarantee, personal collateral/surety and even saving deposit instruments. These options of recovery action have long been in practice.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource person:**

- Mr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisement), Karachi.
- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are considered necessary at this stage.

4.11. Standard	National legislation shall determine the rate of interest chargeable on amounts of duties and taxes that have not been paid by the due date and the conditions of application of such interest.
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**Overall Assessment:** Compliant

**Relevant Law:**

- Customs Act; Section 38

**Discussion:**

*Law:* Section 83(2) of the Customs Act, as amended by virtue of the Finance Act (dated 30<sup>th</sup> June, 2006) and Finance Act, (dated 30<sup>th</sup> June, 2009) requires that when duty and taxes are not paid within 10 days of the finalization of assessment, the owner of the goods shall be liable to pay surcharge at the rate of KIBOR plus three percent per annum.

Sub section 2 of section 21-A of the Customs Act, provides for deferment of duty which reads as under:

(2) Where deferment of duties is allowed by the Board under sub-section (1), a surcharge not exceeding KIBOR plus three percent per annum shall also be payable on the deferred amount from such date and in such manner as the Board may by rules prescribe.

Deferment is at present allowed in two situations, in case of imports, i.e.;

- Imports of machinery and equipment for Industry; and
- Import of ships for scrap.

The period for deferment in the former case is given in rule 315 of the Customs Rules i.e. half of the leviable duty is paid out-right and the remaining amount of duty is deferred for three years and is to be paid in lump sum under rule 316, *ibid*, after expiry of the three year period. It may be added that surcharge is levied on the deferred amount at the rate of 14% under rule 317 of the said rules.

Likewise in the case of ships for scrapping, procedure is laid down in rules 322, 323 and 324 of the Customs Rules, 2001, the deferred amount being sixty percent of the assessed duty and is to be paid in two monthly installments each payable within thirty days of the previous payment. No surcharge is payable in case of ships under the subject rules. However, ships for scrapping are currently exempt from levy of customs duty.

It is also worth noting that in case of ships for scrapping, sales tax is payable under Rule 58H of the Sales Tax Special Procedures Rules, 2007. This rule pertains to schedule of payment which exceeds 14 days. The post-dated cheques for the said tax are deposited with the Customs and retained. But actual amount of deferred tax is deposited along with monthly tax return filed in respective jurisdictions of Regional Tax Offices (RTO) and Large Tax Payer Units (LTU). The Customs release or enforce (for encashment) the post-dated Cheques on report of the respective tax offices. The Collector of Customs, MCC, Gwadar, in whose jurisdiction ships are scrapped (at Gaddani beach), maintains regular liason with the tax authorities in this regard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follow the law.

The law and practice are thus in compliance with the Standard.

**Resource person:**

- Mr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC, (Appraisalment), Karachi.

- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are deemed necessary at this stage.

4.12. Standard	When the duties and taxes have been paid, a receipt constituting proof of payment shall be issued to the payer, unless there is other evidence constituting proof of payment.
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**Overall Assessment:** Compliant

**Relevant law:**

- The Customs Rules; Rules 532-534.

**Discussion:**

*Law:* Like other Government dues, previously the duties and taxes were paid through Treasury Challans (Form- 32A) prescribed under the Treasury Rules, under the Head of Account issued by the Accountant General of Pakistan. In most of the places the National Bank of Pakistan which has been declared as Sub-Treasury, such amounts are deposited therein. Since now most of the Goods declarations are made through PACCS system, the taxes and duties are paid online in the National Bank of Pakistan under rules 532 to 534 of the Customs Rules.

All payments in connection with duties, taxes, and surcharges to Customs are made through banks which issue receipts in acknowledgement of the deposits. The Customs recognize such deposit receipts as proper discharge of liability of payment of duties and taxes. This system of bank deposits has been working smoothly for decades.

*Practice:* Standard 4.12 does not require legislative compliance. However, in practice Customs, or its agents, issues appropriate receipts in compliance with the Standard.

**Conclusion:** In practice Customs payment systems issue receipts

**Recommendations:** No recommendations are considered necessary at this stage.

4.13 Transitional Standard	National legislation shall specify a minimum value and/or a minimum amount of duties and taxes below which no duties and taxes will be collected.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 19C.

**Discussion:**

*Law:* Section 19C of the Customs Act reproduced below provides that where cumulative amount of duties and taxes on a Goods declaration is equal to or less than, one hundred rupees, the same shall not be demanded.

**19C.Minimal duties not to be demanded:** Where the cumulative amount of all duties and taxes on a Goods Declaration is equal to, or less than, one hundred rupees, the same shall not be demanded.

*Practice:* According to the interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource person:**

- Mr. Saeed Khan Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Dr. Muazzam Jah, Additional Collector of Customs, AFU Lahore, MCC (Preventive), Lahore.

**Conclusion:** The law is thus in compliance with the Standard.

**Recommendations:** In section 19C of the Customs Act, 1969, the *de minimis* amount of duties and taxes is increased to reflect current purchasing power.

4.14. Standard	If the Customs find that errors in the Goods declaration or in the assessment of the duties and taxes will cause or have caused the collection or recovery of an amount of duties and taxes less than that legally chargeable, they shall correct the errors and collect the amount underpaid. However, if the amount involved is less than the minimum amount specified in national legislation, the Customs shall not collect or recover that amount.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 19C and 206.

**Discussion:**

*Law:* Correction of errors is provided for, in section 206 of the Customs Act, 1969. The minimum recovery provision of section 19C applies in such cases, if after correction of error, the recoverable amount of duty and taxes is less than one hundred rupees, it is not to be recovered as per provisions of section 19C *ibid*.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law. The law and practice are thus in compliance with the Standard.

**Resource Persons:**

- Mr. A.C AFU MCC (Preventive), Karachi.
- Mr. Farooque Tehsin, Former Superintendent AFU, MCC (Preventive), Lahore.
- Mr. Muazzam Jah, Deputy Collector of Customs, AFU, MCC (Preventive), Lahore.
- Mr. Mohammad Asrar Khan, Principle Appraiser AFU, MCC, Islamabad.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jamel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this stage.

4.15. Standard	Where national legislation provides for the deferred payment of duties and taxes, it shall specify the conditions under which such facility is allowed.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 21-A
- The Customs Rules; Rules 314-321.

**Discussion:**

*Law:* Section 21A of the Customs Act confers powers on FBR that 'subject to such conditions, limitations and restrictions as it thinks fit to impose, the Board, in such general cases as may be prescribed by rule or by special order, defer the collection of customs duties either in whole or in part'. FBR is also empowered by sub-section (2) of section 21 of the Act to levy a surcharge at such rate and in such manner as it may deem necessary. This sub section read as under:

(2) Where deferment of customs-duties is allowed by the Board under sub-section (1), a surcharge not exceeding [KIBOR plus three] *per cent* per annum shall also be payable on the deferred amount from such date and in the manner as the Board may by rules prescribe.

FBR has allowed this facility for imports of plant, machinery and equipment for industry and for ships imported for scrapping and the procedure and conditions for deferment are provided for in Chapter XIII of the Customs Rules. Sub Chapter 1 contains the conditions and procedures applicable for imported machinery (Rules 314-321). Sub-chapter 2 provides (Rules 322 to 323) procedures and conditions for imported ships for scrapping. A surcharge is levied under Rule 317 at the rate of 14% of the deferred amount. In case of sales tax on ships for scrapping the payment of sales tax is also payable under a special procedure called, "Special Procedure for Ship Breaking Industry Rulers 1997" Under rule 58H of the Sales Tax Special Procedures Rules. It is administrated by respective office of Regional Tax Office or large Taxpayer office.

*Practice:* Deferment of duty by importers is in decline with respect to duty levied on machinery for the following reasons:

- I. Machinery imports are subject to very low rates of duty or are free from duty;
- II. The levy of the surcharge on deferred payment has become a large financial cost; and
- III. Difficulties are faced by importers in releasing securities/sureties from Customs after deferred duty has been paid to the Government.

However we could not get comparative statistics for analysis and would restrain from comment. The law and practice are thus in compliance with the Standard.

**Resource persons:**

- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Fazal Yazdani, Collector of Customs, MCC (Preventive), Lahore.
- Dr. Arsalan Subaktageen, Collector of Customs, MCC, Gwadar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are considered necessary at this time.

4.16. Standard	Deferred payment shall be allowed without interest charges to the extent possible.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Section 21-A (2).
- The Customs Rules; Rules 314 to 321.

**Discussion:**

*Law:*

Section 83 of the Customs Law permits importers ten days from date of assessment to pay their duties and taxes before liable for any interest surcharge.

The FBR does permit industry a significant period of deferral, i.e. three years, in consideration of their unique circumstances. However, Section 21-A (2) of the Customs Act, 1969 (The Act) provides that;

(2) Where deferment of duties is allowed by the Board under sub-section (1), a surcharge not exceeding KIBOR plus three percent per annum shall also be payable on the deferred amount from such date and in such manner as the Board may by rules prescribe.

The FBR in Custom Rules 314 to 321 has prescribed the procedure for deferment which fixes the surcharge rate at 14% per annum payable on the extent of deferred amount of duty. The deferment is allowed up to 50% of duty leviable and the period of deferment is three years.

*Practice:* In general Customs provides all importers with an implicit ten day deferral period without payment of interest under Section 83.

The law is substantially compliant with the Standard.

**Conclusion:**

In general Customs provides all importers with an implicit ten day deferral period without payment of interest under Section 83. This is consistent with the spirit of Standard 4.16. Imports of machinery and ships for scrapping enjoy an explicit deferral but under terms that are not compliant with Standard 4.16.

**Recommendations:** FBR may consider amending Section 21A of the Customs Act, 1969 and Rule 317 of the Customs Rules, 2001, to levy a surcharge on the amount of deferred payment after fourteen days, to be reckoned from the date of filing of a Goods declaration, in line with the provisions of sub section (2) of section 83 of the Customs Act, 1969 and section 104 of the Act read with section 79 thereof.

4.17. Standard	The period for deferred payment of duties and taxes shall be at least fourteen days.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act, 1969; 21A
- The Customs Rules; Rules 316, 322, 323 and 324
- The Sales Tax Special Procedures Rules; Rule 58H.

**Discussion:**

*Law:* Deferment of duty is admissible under section 21 of the Customs Act. At present deferment is allowed in the following two situations of imports.

- Imports of machinery and equipment for Industry (in this case only half the amount of duty is deferred); and
- Import of ships for scrap.

The period for deferment in the former case as given in rule 316 of the Customs Rules is three years. It may be added that surcharge is levied on the deferred amount at the rate of 14% under rule 317 of the said Rules. In the latter case, forty percent of the due amount is to be paid upon filing the GD and the remaining amount is to be paid in two equal installments, at the end of each month. No surcharge is payable in case of ships under the subject rules. However, ships for scrapping are currently exempt from levy of customs duty.

It is also worth noting that in case of ships for scrapping, sales tax is payable under Rule 58H of the Sales Tax Special Procedures Rules. This rule pertains to schedule of payment which exceeds 14 days. The post-dated cheques for the said tax are deposited with the Customs and retained. But actual amount of deferred tax is deposited along with monthly tax return filed in respective jurisdictions of Regional Tax Offices and Large Tax Payer Units. The Customs release or enforce (for encashment) the post-dated Cheques on report of the respective tax offices. The Collector of Customs, MCC Gwadar, in whose jurisdiction ships are scrapped (at Gaddani beach), maintains regular liason with the tax authorities in this regard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Dr. Arslan Subatetageen, Collector of Customs, MCC, Gawadani.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:**

In general Customs provides all importers with an implicit ten day deferral period without payment of interest under Section 83. This is less than the 14 day (ten working days) period required by Standard 4.17.

The explicit deferrals for machinery and ships for scrapping are for periods of at least three months. However, no more than 50 percent of the value of the duties and taxes may be deferred. The RKC implies that 100 percent of the payment sum be able to be deferred.

Given that importers may defer payment of duties and taxes for an interest free period of ten days, the Law is in substantially in compliance with the standard.

**Recommendations:**

The Customs Law could be amended to set out conditions for one or more classes of importers to defer payment of duties and taxes assessable under any GD for an interest-free period of 14 days.

4.18 Standard	Repayment shall be granted where it is established that duties and taxes have been overcharged as a result of an error in their assessment.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Section 33 read with section 155R thereof.

**Discussion:**

*Law:* Section 33 of the Customs Act provides that duty paid or over-paid through inadvertence, error or misconstruction shall be allowed if claimed within one year of the date of payment but subject to the condition that incidence of said duty or surcharge has not been passed on to consumers. The period of one year for claiming refund is to be reckoned in case of provisional payment under section 81 of the Act from the date of adjustment of duty after its final assessment and in case of decision or order of an officer of customs, or FBR or the Appellate Tribunal or the Court, the period shall be reckoned from the date of such order.

The provisions of section 31 of the Act are more comprehensive in scope than the Standard. Under the PACCS, where Goods declarations (GD) are filed electronically, payment of duty is made in real time when the system registers a GD and issues a CRN (customer reference number). The system has to finalize the assessment in next step i.e. to examine the contents of GD. If an error of calculation occurs, it can be rectified under section 155R of the Act with approval of the Collector having jurisdiction. Even in this case, the general provision of section 33 *ibid* will apply.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Dr. Arslan Subatetageen, Collector of Customs MCC, Gwadar.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim.

**Conclusion:** Based on the above research, it appears that the law is in partial compliance with the standard.

**Recommendations:** The condition in Section 33 of the Customs Law that the incidence of duties shall not have been passed on to the consumer should be deleted from the law to make customs law compliant with this standard.

<p>4.19. Standard</p>	<p>Repayment shall be granted in respect of imported or exported goods which are found to have been defective or otherwise not in accordance with the agreed specifications at the time of importation or exportation and are returned either to the supplier or to another person designated by the supplier, subject to the following conditions :</p> <ul style="list-style-type: none"> <li>– The goods have not been worked, repaired or used in the country of importation, and are re-exported within a reasonable time;</li> <li>– The goods have not been worked, repaired or used in the country to which they were exported, and are re-imported within a reasonable time.</li> </ul> <p>Use of the goods shall, however, not hinder the repayment if such use was indispensable to discover the defects or other circumstances which caused the re-exportation or re-importation of the goods.</p> <p>As an alternative to re-exportation or re-importation, the goods may be abandoned to the Revenue or destroyed or rendered commercially valueless under Customs control, as the Customs may decide. Such abandonment or destruction shall not entail any cost to the Revenue.</p>
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 21, 21A and 22

**Discussion:**

*Law:* As regards category (i), there is no provision in the Customs Act to repay duty and taxes already collected on the goods which are re-exported to supplier or his designated person when such goods are found to be defective or not in accordance with specifications.

As regards category (ii), since exports are not liable to Customs duty, no repayment thereof is involved. However, section 22 of the Customs Act provides that if the goods are imported in Pakistan within one year of their exportation, and have been consigned to the person in whose account they were exported and these goods have not undergone any processing since their exportation, the appropriate officer not below the rank of an Assistant Collector of Customs may admit the goods;

- a. On payment of duty equal to the amount of rebate, refund or drawback of, any Customs duty or excise duty or any other tax levied by Provincial Government was allowed;
- b. On payment of duty equal to the aggregate of the following amounts of any duty and/or taxes which were not paid at the time of exports:
  - i. The customs-duty chargeable on the imported materials, if any, used in the manufacture of the goods; or
  - ii. The excise duty chargeable on the indigenous materials, if any, used in the manufacture of such goods; or
  - iii. The excise duty, if any, chargeable on such goods; or
  - iv. Any other tax chargeable on the material used in the manufacture of such goods; or
  - v. Any other tax chargeable on such goods,

Alternatively, the goods for exportation or on re-exportation may be abandoned to the Revenue, or destroyed or rendered commercially valueless under Customs control as the Customs may decide. Such abandonment, however, shall not be at the cost of Revenue.

If goods are abandoned or surrendered to FBR/Revenue, the Customs may sell the same in accordance with the provisions of section 201, of the Act and allocate the sales proceeds thereof in the following sequence:

- i. First to pay the expenses of the sale;
- ii. Then to pay the freight or other charges, if any, payable in respect of the goods, if notice of such charges has been given to the person holding the goods in custody;

- iii. Then to pay the customs-duty, other taxes and dues payable to the Federal Government in respect of such goods;
- iv. Then to pay the charges due to the person holding such goods in custody.

If the goods are destroyed or rendered commercially valueless, under Customs control, the same shall be liable to duty as scrap under section 27A, which provision makes the waste or scrap liable to duty and taxes as if imported in that state.

Cases of these categories are uncommon. Yet the treatment given to each case is on merit. No adverse treatment has been reported.

However, cases falling in the first category, i.e. when goods are re-exported after importation and on which payment of duty and taxes has been made, being a hardship case, deserve to be leniently treated. The goods against which duty has been paid, stand permanently exported because these goods did not meet the specifications of import/ purchase order. The importer (now exporter) has exported the same under compelling circumstances and not as a matter of will.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource person:**

- Syed Tanvir Ahmad, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Fazal Yazdani Khan, Collector of Customs, MCC (Preventive), Lahore.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisalment), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.
- Dr. Arsalan Subaktageen, Collector of Customs, MCC, Gwadar.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the Standard.

**Recommendation:** A new provision may be added, for example after section 22A, in the Customs Act to provide for repayment of duty and taxes paid by an importer, re-exporting goods of defective nature or the goods which are not in accordance with the agreed specifications. Such amendment shall be in line with the provisions of section 22 of the Act, subject to conditions and restrictions as may be in force under the Imports and Exports (Control) Act and Foreign Exchange Regulation Act.

<p>4.20. Transitional Standard</p>	<p>Where permission is given by the Customs for goods originally declared for a Customs procedure with payment of duties and taxes to be placed under another Customs procedure, repayment shall be made of any duties and taxes charged in excess of the amount due under the new procedure.</p>
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Section 33.

**Discussion:**

*Law:* Section 33 of the Customs Act is, however, limited in scope and does not cater for repayment of duties and taxes recovered as a result of assessment made according to the declaration made in the GD but when the replacement of GD for another Customs procedure is permitted by the Customs. In short sub-section (1) of section 33 ibid only allows refund of any customs-duties or charges claimed to have been paid or over-paid through inadvertence, error or misconstruction and that too if claimed within one year of such claim having become due. Section 33 reads as under;

**33. Refund to be claimed within one year:** (1) No refund of any customs-duties or charges claimed to have been paid or over-paid through inadvertence, error or misconstruction shall be allowed, unless such claim is made within one year of the date of payment.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Fazal Yazdani, Collector of Customs, MCC (Preventive), Lahore.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisement), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** Sub-section (1) of section 33 of the Customs Act, 1969 may appropriately be modified to allow repayment/refund of duties and taxes charged in excess of the amount due under the new procedure, where permission is given by the Customs for goods originally declared for a Customs procedure with payment of duties and taxes to be placed under another Customs procedure. (Supreme Court decision in Pfizer case)

4.21 Standard	Decisions on claims for repayment shall be reached, and notified in writing to the persons concerned, without undue delay, and repayment of amounts overcharged shall be made as soon as possible after the verification of claims.
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## Overall Assessment: Non-Compliant

### Relevant Law:

- The Customs Act; Section 33.
- The Customs Rules; Rule 542

### Discussion:

**Law:** In the Customs Act refunds are dealt with under section 33, which does not provide for refunds other than arising out of payment/overpayment due to inadvertence in-advertence, error or misconstruction. Other refunds can be on account of a decision of a court of law or if Goods declaration (GD) is permitted by the Customs to be withdrawn after payment of duties and taxes and then goods to be placed under another Customs procedure on filing of another GD, under which either duties and taxes are not payable or the amount on such account is in excess of the amount due under the new procedure.

Rule 542 of the Customs Rules, 2001 deal with the refunds which are processed through PACCS.

**542. Amount of refund in case of cancelled goods declaration.-** In case goods declaration is cancelled, the total amount of duties, taxes and other charges, if any, except income tax and processing charges, shall be refunded to the claimant or where the applicant so desires, the amount may be credited against his NTN in the pre-pact.

Further, in order to meet the requirements of the Standard, rule 542 may also be modified to provide for repayment/refund of the due amount without undue delay but not exceeding 90 days, from the date of filing of the claim.

**Practice:** According to interviews with the resource persons specified below, it appears that Customs practice follow the law.

Resource persons:

- Mr. Abdul Waheed Khan, Former Director General Training (Customs) and Former Member (Technical) Customs Appellate Tribunal, Karachi.
- Mr. Arif Moton, Former Member (Judicial) Customs Appellate Tribunal, Islamabad.
- Dr. Sarfraz Warachi, Collector of Customs, MCC, Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendation:** Section 33 may be modified to provide for repayment/refund of the due amount without undue delay but not exceeding 90 days from the date of filing of the claim. If the repayment is not made within 90 days a surcharge at the rate of Kibor + 3% will be paid. This is the rate that the government charges from the importers when payment of duty is delayed.

4.22. Standard	Where it is established by the Customs that the overcharge is a result of an error on the part of the Customs in assessing the duties and taxes, repayment shall be made as a matter of priority.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Section 33

**Discussion:**

*Law:* Section 33 of the Customs Act reproduced below provides that such over charged amount of duty and taxes shall be refunded.

**33. Refund to be claimed within one year:**

- 1) No refund of any customs-duties or charges claimed to have been paid or over-paid through inadvertence, error or misconstruction shall be allowed, unless such claim is made within one year of the date of payment

Provided that no refund shall be allowed under this section if the sanctioning authority is satisfied that incidence of customs duty and other levies has been passed on to the buyer or consumer.

- 2) In the case of provisional payments made under section 81, the said period of one year shall be reckoned from the date of the adjustment of duty after its final assessment.
- 3) In the case where refund has become due in consequence of any decision or judgment by any appropriate officer of Customs or the Board or the Appellate Tribunal or the Court, the said period of one year shall be reckoned from the date of such decision or judgment, as the case may be.

It is a matter of general practice that such cases are given priority and adjustment or repayment is made early. This has been confirmed by our resource persons. It is also a matter of common knowledge that such cases occur infrequently and, therefore, these are expeditiously settled.

*Practice:* Despite the apparent practice of expediting refunds of overpayment of duties and taxes as a result of an error by Customs, the law gives no urgency for such refunds. .

**Resource persons:**

- Mr. Tanvir Ahmad, Collector of Customs, Port Qasim, Karachi.
- Mr. M. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Mrs. Zeba Haye, Collector of Customs, MCC, Appraisement, Lahore.

**Conclusion:** The law is thus in partial compliance with the Standard

**Recommendations:** The Customs Act is amended as follows:

- i. Deletion of the provision that repayment of overpaid duties and taxes is conditional upon the duties and taxes not having been passed on to the consumer (Section 33).
- ii. A requirement should also be added to section 33 that any overcharge that is a result of an error on the part of the Customs in assessing the duties and taxes be refunded to the importer within 30 days of discovery of the error. Refunds beyond 30 days shall incur at surcharge at the rate of KIBOR +3% payable by Customs.

4.23. Standard	Where time limits are fixed beyond which claims for repayment will not be accepted, such limits shall be of sufficient duration to take account of the differing circumstances pertaining to each type of case in which repayment may be granted
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 33

**Discussion:**

*Law:* The treatment of claims for refund are stipulated in section 33 which deals with repayments due to overcharged amounts on account of error of calculation, inadvertent error in assessment or due to a decision or order of an officer of customs or of Appellant Tribunal or of a court. In each case the time for filing claim is one year which is sufficient. In each case the one year time is to be reckoned:

- In case of over payments due to inadvertence or error or due to provisional assessment , from the time of payment of duty on final assessment and;
- In case of decision of an officer of Customs or Appellate Tribunal or court, from the date of decision.
- Although one year time is considered sufficient for filing a claim of refund in the above stated cases, if the person to whom a refund has become due fails to file his claim with Customs, he may seek an extension of this time limit under section 224 of the Act (reproduced below) and if his reasons for delay are found to be convincing, the period will be extended by the competent authority.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follow the law. In practice refund claims are normally filed within one year. A delay in filing a claim for refund after one year is rare.

**Resource person:**

- Mr. Syed Tanvir Ahmad, Collector of Customs Port Qasim, Karachi
- Mt. Irfan Javed, Additional Collector Customs, MCC, PACCS, Karachi

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are considered necessary.

4.24. Standard	Repayment shall not be granted if the amount involved is less than the minimum amount specified in national legislation.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 19B

**Discussion:**

*Law:* Section 19B of the Customs Act makes provision for this requirement. It stipulates that the amount of duty, interest, penalty, fine or any other sum payable and the amount of refund, draw back or any other sum due under the provisions of this Act shall be rounded off to the nearest one hundred rupees and, for this purpose, where such amount is fifty rupees or more it shall be increased to one hundred rupees and if such sum is less than fifty rupees, it shall be ignored.

It may be clarified that the words 'or any other sum due' appearing in this section cover also all other types of repayments due.

The law covers the purpose of the Standard. It is compliant.

*Practice:* Based on the interviews, the requirement in Section 19B that an amount owed that is less than 50 rupees is to be ignored is being observed only occasionally. Therefore, strictly speaking, the standard is not being complied with as it requires that payment not be granted if it is less than the amount specified in national legislation.

**Resource persons:**

- Mrs. Zeba Haye, Collector of Customs, MCC, Appraisalment, Lahore.
- Dr. Arsalan Subaktagin, Collector of Customs, MCC, Gwadar.
- Mr. M. Iqbal Muneeb, Additional Collector of Customs, MCC, Appraisalment Karachi.

**Conclusion:** The law provides for a very low *de minimis* of 50 Rupees per payment of duty, refund, penalty, etc. In practice this *de minimis* appears to be ignored by Customs in certain cases. It is reasonable for Customs to increase this *de minimis* to a level that minimizes administrative costs while maximizing revenue and refunds, e.g. 1,000 Rupees. Section 19B applies to any payment or sum due under the Customs Law rather than the net payment due under any GD – a large importer making regular net payments to Customs each month could incur multiple small payments each month. If the *de minimis* is set too high then these multiple payments could be excused unnecessarily, at the expense of the revenue.

The *de minimis* under Section 19C refers to the cumulative sum payable by an importer under a GD. In this case, the 19C *de minimis* should be higher than the *de minimis* figure set by 19B. Importers should not have to file a GD for trivial amounts of duty, e.g. anything less than 10,000 Rupees.

**Recommendations:** Customs consider revising the 50 Rupee *de minimis* for any payment due under the Customs Act pursuant to Section 19B, to reflect current administrative costs and risks to the revenue.

## Chapter 5: Security

5.1. Standard	National legislation shall enumerate the cases in which security is required and shall specify the forms in which security is to be provided.
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**Overall Assessment:** Partially Compliant

### Relevant Law:

- The Customs Act; Sections 81, 86, 101, 102, 108, 121 and 132.
- The Customs Rules; Rules 53, 343, 619(3) and 639(b).
- General Order; 12/2012 (Order number 11 and 12)
- Public Notice/Letter etc.
  - a. Government of Pakistan Model Customs Collectorate, Customs House Karachi. Public Notice No.1/2010 dated 25-01-2010.
  - b. Government of Pakistan Model Customs Collectorate Port Muhammad Bin Qasim, Karachi. Public Notice No.1/2010 ESTT (PQ) dated 1-02-2010.

### Discussion:

*Law:* Under the Pakistan Customs regime, various provisions of the Customs Act, rules, notifications and general orders issued there under enumerate cases where security is required. One example is rule 619(3) of the Customs Rules:

The forms of the bank guarantee and Indemnity Bond are also prescribed in the following Notifications:

- i. 678(I)/2004 dated 07-08-2004
- ii. 538(I)/1992 dated 01-06-1992
- iii. 27(I)/1998 dated 17-01-1998
- iv. 727(I)/2011 dated 01-08-2011

*Practice:* According to interviews with the resource persons specified below, it appears that the Customs practice follows the law.

### Resource persons:

- Mr. Muhammad Adnan, Supply Chain Manager, Schlumberger, I-10, Islamabad.
- Mr. Nasir Chandna, Customs House Agent, Karachi.
- Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi
- Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the standard.

### Recommendations:

The Customs Act is amended as follows:

- i. All those situations where securities/guarantees are needed are prescribed in the Customs Act and/or through notifications under Section 219 of the Customs Act.
- ii. The notifications also prescribe the type or form of securities/ guarantees/indemnity bonds/ corporate guarantees/undertakings that are acceptable in each situation.
- iii. Describe the entities who may issue each form or type of security e.g. Banks, insurance companies, corporations etc.

## 5.2 Standard

The Customs shall determine the amount of security.

**Overall Assessment:** Partially Compliant

### Relevant Law:

- The Customs Act; Sections 79, 104, 131, 139, 144 and 145.
- The Customs Rules; Rule 45, 53, 54, 77, 78, 328, 329 and 537.
- Customs General Order 12/2002.
- Public Notice/Letter etc.
  - a. Government of Pakistan Model Customs Collectorate Customs House Karachi. Public Notice No.1 /2010 dated 25-01-2010.
  - b. Government of Pakistan Model Customs Collectorate Port Muhammad Bin Qasim, Karachi. Public Notice No.1/2010 ESTT (PQ) dated 1-02-2010.

### Discussion:

*Law:* The amount of security is determined by Customs while assessing the goods for duties and taxes under section 80, read with sections 79, 104, 131, 139, 144 and 145 of the Customs Act. Although, the amount of security generally corresponds to the duties and taxes involved, customs legislation does not specifically set out the methodology of calculating the amount of the security for each form of security.

The forms of the bank guarantee (BG), of Indemnity Bond (IB) are also prescribed in the following Notifications:

- i. 678(I)/2004 dated 07-08-2004
- ii. 538(I)1992 dated 01-06-1992
- iii. 27(I)/1998 dated 17-01-1998
- iv. 727(I)/2010 dated

*Practice:* In practice, following the legal provisions, Customs determines the amount of security, corresponding to the duties and taxes involved.

In PACCS/ WeBOC, the amounts are calculated by the system and are sent through Yellow channel. The system sends the Goods declaration to Bank Guarantee (BG) Cell for deposit of the BG/ IB.

In One-Customs, assessment is done by Assessing Officers and Goods declaration is taken physically to the BG cell, for deposit of the BG/ IB.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

### Resource persons:

- Syed Tanvir Ahmed, Collector of Customs, Karachi.
- Mr. Nasir Chandna, Customs House Agent, Karachi.
- Mr. Muhammad Adnan, Supply Chain Manager, Schlumberger, I-10, Islamabad.
- Mr. Nasir Chaandna, Customs House Agent, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi.
- Mr. Qurban Ali Khan Additional Collector of Customs, AFU Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the standard.

**Recommendations:** The Customs law is amended to prescribe the detailed methodology for determining the amount of security/guarantee in different situations by introducing a new section in the Customs Act and/or through a notification under Section 219 of the Customs Act.

5.3. Standard	Any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the customs.
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**Overall Assessment:** Non-Compliant

**Relevant Law:** (need to be provided)

**Discussion:**

*Law:* This Standard is consequential to Standard 5.2 and provides that in case Customs has determined the amount of security, the person required to provide the security, shall be allowed to choose any one of given forms of security provided that it is acceptable to the Customs.

However, in Pakistan Customs regime, no such provision/facility exists, either in legislation or in practice. The law has specified types of securities acceptable in each case. In some cases more than one form of security is permitted, more often however, only a bank guarantee format is required.

*Practice:* According to interviews with the resource persons specified below, it appears that there are no general provisions provided in law.

**Resource Person:**

- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Nasir Chaandna, Customs House Agent, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector of Customs (Law), MCC (Appraisement), Karachi.
- Mr. Muhammad Jameel Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the standard.

**Recommendations:** The Customs Act is amended to permit any person required to provide a security to Customs, the right to choose the form of security, provided that form of security is acceptable to Customs.

5.4. Standard	Where national legislation provides the Customs shall not require security when they are satisfied that an obligation to the customs will be fulfilled.
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**Overall assessment:** Non-Compliant

**Relevant Laws:**

- The Customs Act; Sections 19, 20, 21 and 81.
- SRO Number 400(I)/97 dated 13-05-1997.
- SRO Number 678(I)/2004 dated 07-08-2004.

**Discussion:**

*Law:* This Standard provides that national legislation may authorize Customs to waive the requirement for security in situations where Customs is satisfied that a trader's obligation to Customs will be fulfilled.

This waiver facility may be provided to persons with an excellent record of compliance with customs or fiscal legislation. For example, large corporate entities that are regular users of the customs procedure concerned and without convictions for Customs offences.

However, no such provision exists in Pakistan Customs Act, 1969 or rules made there under.

*Practice:* In practice too, goods are not released without adequate security, as required under the relevant enactment.

**Conclusion:** The law and practice are not in compliance with the Standard.

**Recommendation:** The Customs Act is amended to permit Customs to waive a security requirement if the person meets criteria listed in the Act satisfying Customs that the person will fulfill their obligation to Customs.

5.5. Standard	When security is required to ensure that the obligations arising from a customs procedure will be fulfilled, the customs shall accept a general security, in particular from declarants who regularly declare goods at different offices in the customs territory.
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**Overall Assessment:** Non-Compliant

**Relevant Law:**

- The Customs Act; Sections 86 and 102.
- The Customs Rules; Rules 45 and 274.

**Discussion:**

*Law:* This Standard is consequential to Standard 5.1. and provides for Customs to accept a general security instead of separate securities in each instance, in particular, from traders who regularly declare goods at different offices in the Customs territory. This means one revolving guarantee would be acceptable for imports at all Customs stations.

No provision for a general security exists in customs legislation.

*Practice:* According to the interviews with the resource persons specified below, without the necessary legislative authority in place Customs does not accept a general security.

**Resource persons:**

- Syed Tanvir Ahmed, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. Irfan Javed, Additional Collector of Customs, MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the standard.

**Recommendation:** In appropriate cases, i.e. where the Customs is satisfied that the person, business or company concerned can be relied upon and has a good track record as to payment of duties and taxes, it may accept a general security, such as indemnity bond or corporate guarantee, in particular from importers who regularly declare goods at different offices in the customs territory. Customs Rules may be amended, accordingly.

5.6. Standard	Where security is required, the amount of security to be provided shall be as low as possible and, in respect of the payment of duties and taxes, shall not exceed the amount potentially chargeable.
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### Overall Assessment: Non-Compliant

#### Relevant law:

- The Customs Act; Sections 81, 86, 99, 101, 102, 108, 121 and 132
- The Customs Rules; (Notification Number 450(I)/2001 dated. 18-06-2001).

#### Discussion:

*Law:* This Standard is consequential to Standard 5.2 and provides that in no case shall the amount of security exceed the amount of duties and taxes involved. Normally the Customs security covers the amount of duties and taxes. However, there are instances where the security is *twice* the amount of duties and taxes chargeable. For example, provisions of section 132 of the Customs Act.

*Practice:* According to the interviews with the resource persons specified below, it appears that Customs practice follow the law.

#### Resource person:

- Dr. Sarfaraz Warraich, Collector of Customs, MCC Sambrial, Sialkot.
- Mr. Shehanshah Husnain, Additional Collector of Customs, MCC Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the Standard.

#### Recommendation:

- Section 132 of the Customs Act, 1969 needs to be modified to bring it in compliance with the Standard 5.6. Alternatively, a better option would be that the Customs Act has one generally applicable provision for Security which specifies, inter alia, that the amount of any security shall not exceed the duties and taxes potentially chargeable.
- The provision of law is against the basic law of Pakistan. Nobody can be charged double the duties and taxes. This is especially so when it concerns exports. We should recommend that this provision of law should be deleted from the Customs Act.

5.7 Standard	Where security has been furnished, it shall be discharged as soon as possible after the customs are satisfied that the obligations under which the security was required have been duly fulfilled.
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**Overall Assessment:** Non-Compliant

**Relevant Laws:**

- The Customs Act; Sections 81 and 114.
- The Customs Rules; (Notification Number 450(I)/2001 dated. 18-06-2001).

**Discussion:**

*Law:* This Standard is consequential to Standard 5.1 and provides that in case a security has been furnished, it shall be discharged as soon as possible but only after the customs are satisfied that the obligations under which the security was required have been duly fulfilled.

Neither of the potentially relevant sections of the Customs Act, 1969 (Sections 81 and 114) specifically lay down the time for discharge of a security, after fulfillment of the obligations. Section 81, only provides that “on completion of final determination, the amount already paid or guaranteed shall be adjusted against the amount payable on the basis of final determination, and the difference between the two amounts shall be paid forthwith to or by the importer, as the case may be.”

*Practice:* In practice, there are often long delays in the discharging of security, due to lengthy procedures. According to interviews with the resource persons specified below, it appears that neither the law nor the practice is in compliance with the standard.

**Resource persons:**

- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.
- Mr. Irfan Javed, Additional Collector of Customs, MCC, Appraisement, Karachi.

**Conclusion:** Based on the research, it appears that the law and practice are not in compliance with the standard.

**Recommendations:** The Customs Act is amended to (i) provide for expedited discharge of securities/ guarantees/ bonds etc. and (ii) impose a penalty against any Customs official responsible for holding security without valid reason.

## Chapter 6: Customs Control

6.1. Standard	All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.
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**Overall Assessment:** Compliant

### Relevant Law:

- Customs Act; Section 9, 10, 42, 43, 84-115, 120- 122, 126- 129A, 139, 140, 144,145, 197
- Customs Rules; 225- 236, 342-363
- General Orders 2007; 4
- Tracking and Monitoring of Cargo Rules, 2012
- Customs General Order (CGO) 2002; 12
- Customs General Order, 2007; 4
- Imports and Exports (Control) Act, 1950

### Discussion:

**Law:** More than twelve chapters of Customs Act, contain the provisions providing for the Customs control over goods and means of transport (ships, aircraft, rail and other carriers) both at entry into, and at the time of exit from, Pakistan. To illustrate:

- Section 197 of the Act provides that Customs shall, for the purpose of this Act, have control over all conveyances and goods in a Customs-area”.
- FBR is empowered under section 9 of the Act, to notify specific areas as customs ports, and under section 10 thereof inside the Customs port, to approve places, berths and sheds for loading and unloading of goods.
- Section 42 of the Act requires a ship, aircraft or carrier to give advance notice to customs, to call/land only at a Customs port or airport and on arrival, to give detailed report of crew, passenger, cargo etc. Likewise, a truck has to report at Land Customs Station; officers of Customs have to board ships, remain on board and authorize movement of goods. Customs control starts when a vessel/carrier files the Import General Manifest (IGM) under section 43 of the Act in case of aircraft, rail, truck etc). The IGM is a comprehensive statement of inventory of goods on board the vessel or carrier. Eventually, the control by Customs ends when the landed/ disembarked goods get fully accounted for in Customs records, ranging from filing of IGM to filing of Goods declaration by importer/agent and finalization of assessment, payment of duty/taxes in consequence of goods declaration filed for home consumption or, in case of transit goods, when the same exit through land customs station for country of destination. In case of warehoused goods the control terminates after the goods are cleared on payment of duty. Postal parcels are covered under sections 144 and 145 of the Act;
- Passengers entering or leaving the country through land, aircraft or ship are required to pass through Customs and their baggage is subject to physical checking under sections 139 and 140;
- Off-dock/inter-port movement of goods is governed under serial number 105 of Customs General Order (CGO) No. 12 of 2002;
- Transshipments of commercial cargo to upcountry dry ports are covered under sections 120,121,122 of the Customs Act;
- In case of control over Transit cargo, sections 126-129A of the Act apply;
- For sealing/de-sealing of containers and locked carriers of goods in transit from a port to a Land Customs Station, Customs General Order No. 4 of 2007 providing an elaborate procedure;

- ix. Monitoring of all types of goods, except US/ISAF, are monitored under Tracking and Monitoring of Cargo Rules;
- x. Warehousing of goods is covered under sections 84-115 of the Customs Act 1969, and rules 342-363 of the Customs Rules. Manufacturing Bonds and Export Processing Zones are dealt in accordance with rules 225-236 of the Customs Rules;
- xi. As an enforcement check, any Customs officer having jurisdiction and the officers of the Directorate of Intelligence and Investigation of FBR can check any consignment/cargo, if seals are found tampered and there is reason to believe that there is a violation of the Act or Rules;
- xii. Powers of Customs for prevention of smuggling are given in sections 158-192 of the Act. These provisions cover search and arrest of persons, search of carriers and premises, seizure of goods and conveyance and, investigation of cases, prosecution of accused, and adjudication of cases; and
- xiii. Other vital Customs controls are contained in sections 15 and 16 of Chapter IV of the Customs Act. Section 15 of the Act prohibits the import and export of certain goods and categories or classes of goods, while section 16 empowers the Federal Government to prohibit or restrict taking in, or taking out, of Pakistan any goods of specified description. Import/export of certain goods or categories or classes of goods are also prohibited, restricted by other laws of the State such as the Imports and Exports (Control) Act, 1950. Such prohibitions/restrictions are also enforced by Customs at points of entry and exit. The Customs exercise these controls very strictly such as acts involving detention or seizure and confiscation of goods or levying the same to other penalties provided under the law.

**Practice:** According to interviews with the resource persons below, it appears that in practice, these controls are being exercised comprehensively at ports; land Customs stations, as well as warehouses. However in exercise of these controls over transit consignments to Afghanistan some serious irregularities have come to light. Similarly regards customs bonded warehouses and manufacturing bonds at some places/times the controls have not been exercised very vigilantly and strictly, resulting in much litigation.

**Resource person:**

- Mr. Yahya, former Collector of Customs, MCC (Preventive) and now Director of Customs Intelligence & Investigation, Karachi.
- Mr Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Irfan Javed, Additional Collector of Customs, MCC (Appraisalment), Karachi.
- Mr. Inam Rehmani, Clearing Agent, Karachi.
- Mr. Zaman, Inspector of Customs, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are considered necessary at this time.

**Note** that Customs are addressing the irregularities highlighted in the practice discussion above. USAID and other donors are assisting this work.

### 6.2. Standard

Customs control shall be limited to that necessary to ensure compliance with the Customs law.

**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 197

**Discussion:**

**Law:** The Standard requires that Customs control shall be limited to the extent as may be necessary for ensuring compliance.

It is worth noting that even in the past; Customs controls under the conventional operations based on manual processes were kept at bare minimum. These comprised:-

- reporting to Customs by ships masters , conveyances and carriers; boarding ships by Customs with loose cargo before bulk-breaking; issuing of port clearance by Customs in prescribed form to them before departure;
- inventory control through Import General Manifest (IGM) filed by ship masters;
- keeping movement of goods, their loading and unloading and clearance from ports/Customs stations/areas under control through GD, port clearance reconciliation of Manifest and Goods declarations, records of custodian of goods/terminal operator and Customs auction records;
- documentary control over transshipped goods under cover of transshipment Permit and goods-in-transit to Afghanistan under cover of GD in sealed containers, carriers and railway wagons and endorsement on the GD at points of exit at Pakistan-Afghanistan border stations in case of Afghan Transit and the confirmation of receipt of goods at Custom stations, in case of transshipment; and
- enforcement operations to prevent illegal entry of goods/merchandise and to seize goods, which have entered the country in violation of law and to prosecute in courts of first and appellate instance.

**Practice:** According to interviews with the resource persons specified below, it appears that with the application of IT to cargo at sea ports of Karachi and Port Qasim, the electronic processing in real time has transformed Customs control into automated mode enhancing efficiency, reducing processing time, minimizing physical contact and substantially improving credibility and certainty.

The Pak-US joint Customs operation called 'IC3' at Port Qasim, Karachi is an innovative IT application by Pakistan Customs. This is a computerized clearance operation of containerized export cargo to the USA that scans and checks images simultaneously in real time at Port Qasim and the port of destination in USA. The operation has worked very successfully since 2007. It has transformed Customs control and goods processing, almost eliminating the risk of offending goods being cleared for export, such as narcotics, hazardous substances, prohibited goods and goods other than those declared in documents. It has improved productivity and trade facilitation. Besides these tangible benefits, IC3 has helped Customs gain invaluable experience of joint operations with another Customs administration. The Customs personnel have gained skills and acquired experience and understanding of new dimensions of Customs management and strategy.

Since computerization will soon cover most Customs operations, controls by Customs will be further automated, thus minimizing trader compliance costs and Customs increasing effectiveness, enabling

Customs in risk management, enforcement, in monitoring cargo and carrier movement and in port clearance of ships and clearance of cargo.

**Resource persons:**

- Mr. Mohammad Yahya, Chief Collector of Customs, (South), Custom House, Karachi.
- Mr. Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. A.W.Marwat, Departmental Representative Customs Appellate Tribunal, Islamabad.
- Mr. Shehansha Husnain, Additional Collector of Customs, MCC, Port Qasim, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

6.3. Standard	In the application of Customs control, the Customs shall use risk management.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Section 3BBB

**Discussion:**

*Law:* The Standard requires use of risk management in the application of Customs controls.

Risk Management is of significant importance in Customs control operations. On the one hand, it has to focus on protection of revenue. On the other hand are the considerations to protect society from adverse impact of narcotics, hazardous goods, toxic wastes and inflow of illegitimate products. In other words risk management should help ensure only legitimate flow of goods which will get duly documented and therefore complying with legal requirements, regulatory controls and payment of duties and taxes.

Risk management is inherent in all management activities. In Customs its importance has become more pronounced in the current perspective of the declining tax-GDP ratio, the increasing public debate on revenue leakages and the widening resource gap. However, risk management is not just to identify and mitigate some marginal threats to the otherwise normal operations. It means a “program of compliance” for Customs to 'adequately and responsibly' carry out its legal and ethical responsibilities in a fair, open, transparent manner, making the most efficient use of man power, equipment and resources and achieving concrete results by optimizing revenue collections.

In the last National Budget (June, 2012), the Customs Act was further amended with a new Section 3BBB, which envisages setting up a Directorate General of Risk Management. Its operationalization will help in the rational and effective application of risk management as a program toward achieving total compliance. Customs is developing staff skills, changing mindsets, creating in all employees and management a total commitment to the organization and duty. This work is supported by suitably equipping and enabling personal; and by putting in place a program of monitoring and audit which puts a high level of responsibility on each official and inspires in each one a sense of personal accountability. This audit function includes follow up action to recover unpaid duties and enforcement against parties and officials in violation of Customs law and sending officials on reorientation programs. The stakeholders in Customs operations such as Customs agents are included in compliance programs so as to enlist their full support and cooperation and assure them of better, speedy and wholesome service in processing of cargo and clearance of ships/vessels and carriers as well as goods.

The D.G Risk Management will need full support in terms of resources, equipment, personnel and above all support from FBR as well as at the political level so that programs of compliance can be systematically developed and implemented as the broad objective of risk management.

In the short run, the Director General Risk Management shall have to revamp the risk analysis segment of his team so that the relevant risk elements are incorporated in the automated software programs being applied in electronic processing of cargo, ships, carriers and other related activities being developed for electronic processing of goods.

WeBOC software, which is the basis of the rapidly evolving process of Customs computerization, to our knowledge, is being upgraded to enhance its capacity and depth for use in selectivity as a risk management tool. Because computerization is shortly to be extended to most locations and all Customs processes throughout the country, it is bound to further strengthen the existing system of risk management.

**Practice:** According to the interviews with the resource persons specified below, it appears that the envisioned management change (i.e. the creation of DGRM) and the on-going WeBOC developments, risk management system is in state of evolution.

**Resource persons:**

- Syed Tanvir Ahmed, Collector of Customs MCC, Port Qasim, Karachi.
- Mr. Aamir, Collector of Customs PACCS MCC Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in partially compliance with the standard.

**Recommendations:**

- The Directorate General of Risk Management be operationalized by FBR / Customs at the earliest.
- Strengthening of WeBOC System be given top priority; and
- Personnel in risk management may be given training in risk management, as a project and even members of staff already trained, may be retrained in new techniques for up-dating and upgrading their skills and re-oriented for the task as a project designed on modern lines.

## 6.4. Standard

The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.

**Overall Assessment:** Partially Compliant

### Relevant Law:

### Discussion:

*Law:* The Standard requires Customs to use risk analysis in determining (and targeting) persons and goods, including transport, which are to be examined and to determine the extent of such examination.

*Practice:* Risk analysis is a part of the process of assessment of goods as well as persons i.e. to allow legitimate flows and intercept the non-legitimate and to assign correct classification to goods and apply thereto the correct rate of duty and other regulating controls. It starts with analysis of individuals and goods, the particular supplier, the country of origin or of destination; the transport used i.e. the carrier type, packaging mode, route and the like. These elements, put together, determine the profile of an importer or exporter or a consignment and then assign weightage of risk sensitivities. This analysis thus helps in determining which goods are to be targeted and examined and to what extent.

This kind of risk analysis is in use, with some help of IT applications, in One-Customs and its significance is well recognized by Customs in the manuals being used to guide daily operations. This has also been incorporated in the risk profile models of WeBOC which is the software back-bone of the Customs computerized system.

Its full impact, as a risk management tool, however, has yet to materialize. The reason is that the entire operations of Customs are by and large in the conventional mode. Risk management and risk analysis as modern tools of effective management require a new approach, a transformation of mindset, restructuring of operations, new training and skill development programs and proper orientation. The broader framework of this management design is “compliance” which means gearing and committing the entire organization to perform the legal organizational functions and duties with full understanding, commitment, objectivity and dedication accepting responsibility and accountability and requiring all colleagues, peers, supervisors and subordinates to do accordingly.

In the existing environment risk analysis has to be pursued very aggressively but with diligence keeping in view the embedded discretionary interventions by officers (such as asking an importer for additional supporting documents or for examination of goods) while processing the GD and assessing duties and taxes. This is necessary because these interventions can be applied arbitrarily. For effective application of risk analysis the concerned officers require reorienting and training in modern techniques of risk management. Similarly, risk analysis has to be well supported by applications of IT in goods processing through the Customs Computerized System.

The newly established Directorate General of Risk Management (DGRM), being a key arm of a modern Customs administration, is expected to approach risk analysis in this modern perspective. It may be made fully operational at the earliest so that it starts playing the pioneering role as an agent of change.

**Resource persons:**

- Mr. Mohammad Yahya, Chief Collector of Customs, (South), Custom House Karachi.
- Syed Tanvir Ahmad, Collector of Customs, MCC Port Qasim, Karachi.
- Mr. A.W. Marwat, Departmental Representative Customs Appellate Tribunal, Islamabad.
- Mr. Shehansha Husnain, Additional Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Sanaullah Abro, Deputy Director of Customs Intelligence and Investigations, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the standard.

**Recommendations:**

- Training be arranged for the customs officers in new techniques of risk management.
- WeBOC be strengthened in its risk management analysis component.
- Directorate General of Risk Management be made fully operational at the earliest and provided with resources and personnel.
- There is a need to ensure that the IT applications/WeBOC are based fully on the principles of Compliance (Risk) Management.

6.5. Standard	The Customs shall adopt a compliance measurement strategy to support risk management.
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**Overall Assessment:** Partially compliant

**Relevant Law:**

- The Customs Act; Sections 3B and 3BBB

**Discussion:**

*Law:* FBR/Customs has created new divisions to address intelligence and risk management - Directorates General of Internal Audit (2006), of Post Clearance Audit (2010) and now of Risk Management (through Section 3B and 3BBB in 2012). The FBR/Customs Directorate General of Internal Audit evaluates performance of individual divisions of Customs and has developed a set of risk indicators to select cases for examination.

There are no details provided in the legislation yet concerning the D.G. Risk Management. However, as this Standard requires, Customs needs to develop a strategy to measure trader compliance with Customs legislation in order to identify and manage the risks of non-compliance. Very briefly stated, 'compliance' implies a holistic management approach in which the teams of the organization, thoroughly trained, highly skilled and well equipped, are committed to the mission of the organization.

*Practice:* At present there are no set rules against which the conventional risk management function is tested or measured.

With the establishment of Directorate General of Risk Management (DGRM), putting in place a compliance measurement strategy will become one of its core functions. Risk management is at a nascent stage. But the compliance measurement is already in focus as the purpose and program of DG, Internal Audit shows and as is evident from the establishment of D.G. Risk Management in June 2012. Its operationalization, however, has yet to become a reality.

**Resource persons:**

- Mr. Mohammad Yahya, Director Intelligence and Investigation (Customs), Karachi.
- Mr. Abdul Rasheed Sheikh, Collector of Customs, MCC (Preventive), Karachi.
- Mr. Iqbal Muneeb, Additional Collector of Customs, MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the standard.

**Recommendations:**

- The Director General of Risk Management should become operational as soon as possible.
- The development of risk management and tools for compliance measurement of risk strategy should be made priority tasks for the Directorate General, Risk Management.
- The Director General of Risk Management should identify the business and technical requirements for the IT application to be developed for the risk management. It will be useful to study the audit reports of DG I & I, DG Post Clearance Audit and DG Internal Audit as source material for designing risk management techniques and for compliance management.

## 6.6. Standard

Customs control systems shall include audit-based controls.

**Overall Assessment:** Partially Compliant

### Relevant Law:

- The Customs Act; Section 26A, 26B, 155M, 211
- The Manual of Audit
- The Manual of Post Clearance Audit

### Discussion:

*Law:* The Customs Act has been amended appropriately to comply with this standard. By section 3B of the Act, a Directorate General of Internal Audit has been established by FBR/Customs. By section 3DD a Directorate General of Post-Clearance Audit has been established. These Directorates, together with Directorate General of Risk Management System (established by section 3BBB in June 2012) are expected to redesign and implement most effectively the audit based control function.

Under Sections 26A of the Customs Act persons doing business with customs are obligated to furnish information, produce record, to make available extracts of documents, make copies of documents and appear before an officer of Customs. By section 26A of the Act, the appropriate officer of Customs is authorized to audit the record of such person. Under section 155M of the Act, similar powers of audit exist in relation to Customs Computerized System.

*Practice:* According to interviews with the resource persons specified below, it appears that with the creation of a reasonable framework for audit-based control and risk management, the Customs are close to attaining the stage of compliance with the Standard. At present Customs are following the two Audit Manuals. However, these manuals need to be improved with reference to best international practices and the personnel involved in audit have to be retained. As more inputs and development work is awaited before audit function gets full thrust and risk management is geared up, compliance of this standard is considered as partial.

### Resource persons:

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Dr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the standard.

**Recommendations:** Audit function and risk management go together in providing security to revenues and society and to reduce release time and save business costs. However the ultimate success of these vital functions of audit and risk management depends on capacity building through skill development, training and support of appropriate IT applications. This need cannot be over emphasized.

- Appropriate training is developed for audit personnel in relevant techniques and analysis, and to enhance their, skills in use of Information Technology (IT), and in computer assisted audits.
- To provide to the various Directorates General the requisite IT software/equipment support being a key audit input.
- To develop an audit based customs control system jointly between Director General Risk Management and Audit
- The Audit Manuals should be suitably upgraded based on best international practices i.e. RKC Standards and Guidelines.

6.7. Standard	The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- [None]

**Discussion:**

*Law:* This Standard envisages that Customs shall seek to co-operate with other Customs administrations and conclude mutual administrative assistance agreements for further enhancing Customs control.

*Practice:* Inter-governmental cooperation for mutual collaboration in Customs controls as a facilitation strategy for expeditious movement of goods in international trade and intercepting illegitimate movement of people as well as goods has gained an importance with increased trade across borders and in passenger movement internationally. Illicit drug trafficking, terrorist activities and the menace of trade in hazardous goods has further aided to the need for such cooperation. In example is Pakistan's collaboration with the USA on scanning of all USA bound containerized cargo at Port-Qasim.

Customs collaboration with foreign investors in connection with establishment and operation of containerized cargo terminals have worked well in bringing investment and introducing standardized IT applications in movement of goods and transforming Customs performance. Pakistan's past and on-going collaboration with several countries (USA, UK for example) in drug control/interdiction are also noteworthy.

Pakistan has already signed Customs co-operation Agreements with Iran (Pakistan Iran Customs Cooperation Agreement) and India, (Agreement between India and Pakistan on Cooperation and Mutual Assistance in Customs Matters). In the former case a border joint operation program is also envisaged and a joint committee for this purpose has been set up. In case of India the customs cooperation agreement has been concluded and is now in operation.

Similar collaboration and understanding regarding passenger and cargo may be pursued with other countries, in particular with neighboring countries as well as the developed countries such as Japan and E.U, the main trade partners of Pakistan. Such collaboration will facilitate and enhance Pakistan's exports to these countries and encourage inwards investment.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Dr. Saeed Jadoon, Additional Collector of Customs, MCC, Peshawar.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendation:** For enhancing Customs Control, FBR/Customs may seek to co-operate further with other Customs administrations and seek through Ministry of Commerce (MoC) and Ministry of Foreign Affairs (MoFA) to conclude/mutual administrative assistance agreements to enhance

Customs control. To begin with, FBR may develop a roadmap towards such agreements with other customs administrations.

### 6.8. Standard

The Customs shall seek to co-operate with the trade and seek to conclude Memoranda of Understanding to enhance Customs control.

**Overall Assessment:** Partially Compliant

#### Relevant law:

#### Discussion:

*Law:* FBR/Customs maintain close liaison with trade, participating in their trade-related moots, conferences and seminars and inviting trade delegates for formal deliberations on tax matters, budget proposals, tax compliance, tax management and trade facilitation. However there is no practice of FBR/Customs entering into MOU's with the local trade.

The need for Customs to maintain close liaison with the trading community cannot be over-emphasized. Customs' functions revolve around commerce which is conducted and carried on by traders and industry. Unless Customs can learn more about trade practices its control and functions cannot be given full effect. Likewise, the industry and trade cannot bring their operations in fullest harmony with Customs laws and procedures. Closer collaboration will open windows for closer understanding and a regular dialogue which could bring the two sides together for working with greater harmony and synchronizing their respective operations for achieving higher level of compliance.

FBR/Customs may like to seek cooperation with trade bodies by concluding Memoranda of Understanding with them to enhance the level of mutual co-operation add to credibility and contribute in tax compliance. It will also make Customs administration more trade friendly and transparent,

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law

#### Resource persons:

- Mr. Mohammad Yahya, Director Customs Intelligence and Investigation, Karachi.
- Mr. Tanvir Ahmad, Collector of Customs, MCC, Port Qasim.
- Dr. Arslan Subaktagin, Collector of Customs, MCC, Gwadar.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the Standard.

**Recommendations:** FBR/Customs may seek to cooperate with the trade and seek to conclude Memoranda of Understanding on cooperation for enhancing Customs control. To begin with a roadmap may be developed identifying the scope, steps, activities and tasks and their expected benefits to trade and Customs; for this purpose the following will be required:

- i. The Customs Act be amended to authorize Pakistan Customs to enter into MOUs with trade bodies and other legal entities for cooperation in the implementation of Customs matters for improving Customs controls.
- ii. For this purpose FBR draft rules under Section 219 of the Customs Act for a standard MOU for all field formations. This format of MOU will also be used by FBR itself.

6.9. Transitional Standard	The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control.
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**Overall Assessment:** Substantially-Compliant

**Relevant Law:** General

**Discussion:**

*Law:* FBR/Customs have been gradually applying IT in Customs operations since 1983 and for over 30 years now, the use of IT applications and e-commerce has extended to actual cargo processing on-line in real time. Currently over 70% of cargo by volume is covered in on-line goods processing. In about a year's time, IT applications and e-commerce in Customs operations is expected to cover almost the entire spectrum of the country's cargo, transport and passenger movement.

We strongly recommend further expansion of IT applications in accordance with best international practices to all processes of movement of goods, ships, carriers/ transport and passengers with applications of risk management techniques, to raise the level of Customs control and protect revenues.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource persons:

- Syed Tanvir Ahmed, Collector of Customs, MCC, Port Qasim, Karachi.
- Mr. Humayun Zafar, Director Automation (Customs), PRAL Islamabad.

**Conclusion:** Based on the above research, IT is an ongoing activity and WeBOC has been rolled out to almost all customs stations in Pakistan, it may be treated as substantially-compliant.

**Recommendations:**

- Level of I.T applications relating to transit goods particularly scanning and sharing of scanned images of containers and goods and to goods in transshipment may be enhanced to further strengthen control and vigilance on the goods and carriers during transit/transshipment.
- Where possible, electronic trace and track technology be applied to carriers/vehicles loaded with transit/ transshipment cargo between Karachi and final destinations at Torkham and Chaman.
- Level of the applications of information technology in case of rail carriage of goods need to be enhanced as per RKC Guidelines on ICT.

6.10. Standard	The Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirement.
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**Overall Assessment:** Non-Compliant

**Relevant law:**

**Discussion:**

**Law:** The Standard requires Customs to evaluate traders' commercial systems where those have an impact on Customs operations to ensure compliance with Customs requirements.

As part of risk management, Customs generally remain alert with respect to practices of traders. As a rule, when an aberration or deviation is noticed, it is reported for investigation. This has now become more important because for automated applications risk profiles have to be developed and applied. Unless trader's actual data is accessed and studied, risk profiles cannot be reliably developed. It is therefore necessary that Customs maintain close contact with trade and study their trading records and systems. In actual practices, such studies are being made in Internal Audit and Post Clearance Audits as well as by Directorate of Customs Intelligence. There is however need for making it a more systematic activity so as to learn about the practices and use the same as relevant data in risk analysis and development of profiles.

Commercial systems of traders could also have positive impact on Customs controls such as the systems developed by the terminal operators, some multi-national businesses with well-developed supply-chain-management regarding inventory control, movement, security and account of goods in the course of their business . FBR/Customs may benefit from the study of such commercial systems.

The new office of Directorate General of Risk Management (DG, RM) may be assigned the task to compile and document studies/reports prepared in past 5 years by DG, IA, DG, PCA, DG, CI &I, and DG, Valuation and, based on findings/conclusions drawn therefrom, a procedure may be formulated for future Customs operations. If DG, RM's office is not likely to become fully functional in near future, a joint study group comprising nominees of DG, I & I could conduct this study. The study group could be assisted by experts in operational research and organizational design/change. DG, RM may create a Research and Development section in his establishment with the responsibility to identify elements in audit reports that reflect on deviant commercial systems or on international best practices and report the same for incorporation in procedures to further improving Customs control.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follow the law.

**Resource persons:**

- Mr. Nazim Saleem, Director General Internal Audit, Islamabad.
- Mr. Iftikhar Ali Malik, CEO, Guard Group of Companies, Lahore.

**Conclusion:** Based on the above research, it appears that Pakistan Customs has little or no current capacity to evaluate traders' commercial systems and so is non-compliant.

**Recommendations:**

- FBR/Customs request DG, RM or consultants to prepare risk profiles to keep a watch on commercial practices as a preventive measure against violations; and
- DG, RM may create a Research and Development Cell which could conduct studies for refinement of risk profiling on a regular basis.

## Chapter 7: Application of Information Technology

7.1. Standard	The Customs shall apply information technology to support Customs operations, where it is cost-effective and efficient for the Customs and for the trade. The Customs shall specify the conditions for its application.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 79, 155A to 155R

**Discussion:**

*Law:* Since 1980, FBR/Customs has gradually introduced application of new information technology in the Customs processes. The early computer installations in Custom House Karachi were IBM S/34, procured in 1980 and IBM S/38 and IBM AS/400, installed in 1992. Compatible stand-alone systems were also designed and gradually installed in 1992 at Lahore, Peshawar, Sialkot, Faisalabad, Hyderabad and Multan. In this regards, the following table is fairly illustrative.

Year	Genesis and Evolution of Information Technology in Customs (1980-2995)
1981-83	Appraiser Guidance System; Statistical Report System. Batch Data Entry System
1992	On-Line Transaction Processing System (OLTP)
2004	Implementation of One Customs System
2005	Roll out of PACCS at KICT, PICT and QICT
2009	Development of WeBOC for FCL Operations
2011	Roll Out WeBOC PICT and QICT
2012	Roll Out of WeBOC at KICT; Development of remaining modules
2013	Country-wide Roll Out Planned
<i>Source: Pakistan Revenue Automated, Limited</i>	

During the period up to 2004, the IT applications at different customs stations were performed through localized equipment and monthly historical data was fed into the mainframe at Karachi Customs House, developing national level data base for classification, valuation as well as administrating exemptions and concessions. It helped in streamlining the processing of Goods declaration and assessment, thereby facilitating the trade. At the same time it enabled FBR/Customs to make informed decisions in operational management and at strategic level i.e. tax design, rationalizing duty exemptions, review of security regime and duty/tax remission and draw back. FBR /Customs thus gained substantial experience of IT applications and in the process, made progress in skill development of its personnel and preparing the ground for a paperless working environment.

More importantly, it enabled the FBR/Customs to embark upon new programs of comprehensive applications of IT in Customs operations across the board i.e. B2B and B2C range of services to be performed in a paperless environment. (B2B: Customs to shipping companies, to port and terminal operators, State Bank of Pakistan, National Bank of Pakistan as sub-Treasury and Regulatory Authorities B2C: Customs to exporters, importers, passengers and postal parcel owners/carriers). As a result, PACCS (Pakistan Computerized Customs System) was introduced in 2005 as an on-line operation. Since 2005, with modification and a switch over to the homegrown WeBOC system (made fully operational in June 2012), this paperless computerized system now applies to over 80% of

Pakistan's import and export cargo. Its coverage is gradually spreading and acceptability in business circles has markedly increased. The system is being rolled out to cover Customs operations all over the country before close of 2013.

The new computerized system (PACCS) is run on WeBOC software and is applied to all customs operations including receiving of arrival intimation of ships, filing of Import General Manifest (IGM) and Export General Manifest (EGM), goods clearance, adjudication, generation of statistical data and related analytical processes. For drawbacks of duty, a stand-alone computerized system has been developed and is operating in Karachi. In this manner it has become an effective tool in tax management and strategy. PACCS has the following four components:-

- **ACCESS** deals with complete automated assessment process.
- **TARIP** is the complete picture of Pakistan's regulations for import or export cargo.
- **ECHO** connects the carriers (shipping agents and co-loaders), customs and custodians (port authorities).
- **INTRA** connects the regulatory authorities involved in imports/exports.

It is one of the most interactive IT systems in the country having unmatched outreach to trade and Industry and inter departmental connectivity within the government and in the corporate sector as well as with other stake holders such as State Bank of Pakistan, National Bank of Pakistan (functioning as Treasury), commercial banks, shipping lines, port/terminal operators and airlines.

Besides PACCS, the older system in use for processing of Goods declaration (GD), One-Customs using manual processing with computerized filing of GD, is still being applied at some Customs Stations at up country locations. This system covers about less than 20% of cargo by volume and is planned to be phased out by the close of 2013 when PACCS will have taken over Customs operations at all Customs Stations.

The process of IT application has been cost effective generally as it has helped reduce the average time needed for filing and processing of a Goods declaration from ten days in 1980 to less than four days (80% of GDs). The Trade can file GD's from their respective offices; 43% of which get cleared the same day and another 36% in the next 3 days. Customs control has become more efficient, productive and hassle-free. Management of Customs securities, recovery of arrears and statistical analysis of revenues and duty remission has become far more meaningful and efficient. The Information Technology applications are thus fairly cost effective and efficient.

The applications of I.T. have been gradual depending on availability of equipment and the development of skill and relevant capability. Most importantly, the latest version of computerization, creating a paperless environment of working has been developed by FBR's I.T. arm, Pakistan Revenue Automation Ltd (PRAL), and it is being rolled out on a fast track basis to attain (near) universality in application. It is indeed a commendable job, keeping in view the vast expanse of its operational scope and the large size of data being processed. This proves the invaluable worth of the pool of professional talent pool at the disposal of FBR/Customs. However to retain and further develop this talent is a major challenge. On the one hand, the IT personnel must be encouraged to improve and upgrade this expertise. On the other, their working environment is further improved and their respective compensation package be incentivized so that experts do not seek new avenues for better personal growth/compensation.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource person:**

- Mr. Tanvir Ahmed, Collector of Customs, MCC, Port Qasim, Karachi.

- Mr. Imtiaz Ali Khan, CEO, PRAL, FBR, Islamabad.
- Mr. Humayun Zafar, Director Automation (Customs PRAL)
- Mr. Shahid Majeed Agha, Additional Collector of Customs, MCC PACCS, Karachi.
- Mr. Rizwan Bashir, Deputy Collector of Customs, MCC, PACCS, Karachi.
- Mr. M. Akram Chaudary, Additional Collector of Customs, MCC, Faisalabad.

**Conclusion:** Based on the above research, it appears that Pakistan Customs is fully compliant with this Standard.

### Recommendations:

- Since IT applications constantly require improvements, PRAL may be given suitable exposure to improve their expertise by
  - Improving their incentive package;
  - Developing an institutional arrangement to receive technical issues/complaints and suggestions from stakeholders and addressing the difficulties by improving the IT application. All such issues/complaints and suggestions be tracked and monitored to ensure that suitable proceedings are initiated to do the needful.
  - detailing them for higher studies in leading universities of the country and also abroad;
  - nominating them for seminars/workshops on IT within the country and internationally, preferably detailing them in groups of three to five persons at the same time for any one event so as to gain in synergy;
  - Awarding, in terms of substantial pecuniary terms, individuals and groups who develop new solutions/programs in innovative manner and create new innovative applications of IT which will help in further improving the operational capacity of Customs in terms of personnel productivity and the more efficient use of the available Information Technology equipment.
- The hardware being used for computerization and application of information Technology in Customs may be provided with a full back-up in hardware as well as for uninterrupted supply of power. In this regards the following measures are recommended:-
  - Stand-by UPS with enough storage capacity and output to sustain the entire system operational for a minimum desirable period;
  - Two power generation plants to be installed as stand-by and long term support;
  - Each plant be test-run on every alternate day for a minimum time to ensure that it is fault-free and in ready-to-run position; and
  - Standing operating procedure for repairing plants and equipment on emergency basis may be laid down, including fast track financial approval, fixing repair responsibilities and pre-qualifications of engineering firms for the repair of the subject equipment.
- This equipment be under direct management of PRAL
- A committee be established, and activated for ensuring security against accidental loss, pilferage, corruption and disruption of-
  - Software operating programs;
  - The trade and revenue data;
  - The record of regulatory interventions; and
  - The record of information sharing with other organizations, agencies, departments, trade chambers/associations.
- The detailed Guidelines of RKC /WCO including its Executive Summary should be studied carefully to see that the WeBOC system being implemented by the Customs is in line with these Guidelines. These are attached for perusal and compliance by FBR/ Customs.

The Guidelines not only mention the above but also how these will be achieved e.g. Compliance (Risk) Management, Single Window Operations, Authorized Economic Operators (AEOs) and reliable trade statistics.

These Guidelines also provide complete scheme of project management for ICT implementation and consequent change management. FBR/ Customs is advised to check these Guidelines and see if the process of implementation has followed these Guidelines fully or substantially.

7.2. Standard	When introducing computer applications, the Customs shall use relevant internationally accepted standards.
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**Overall Assessment:** Compliant

**Relevant law:**

**Discussion:**

*Law:* FBR/Customs have developed an all-embracing program for computerization of Customs which is operating at Karachi port and Mohammad Bin Qasim Port, Karachi. It functions on B2B and B2C lines with compatible connectivity protocols and interactive capacity. Examples are: Customs to other Government regulatory authorities (such as Ministry of Commerce, livestock Development Board, Plant Protection Department, shipping lines, airlines, State Bank of Pakistan, National Bank of Pakistan (also functioning as a sub-Treasury), commercial banks, Civil Aviation Authority and Port authorities while B2C examples are Customs to importers, exporters' rebates, refunds, clients, passengers, post parcel receivers/ senders etc.).

No electronic system/ architecture of such large coverage and functional connectivity can be designed, configured, structured and operated smoothly and successfully without application of internationally accepted standards. This system deals with a vast variety of stakeholders within and outside Customs, and is custodian of sensitive and vital information in large volumes relating to the economy and the people. Being repository of revenue data, the Customs are trusted to have adopted a master strategy in selecting best internationally accepted standards for application in development of the system.

In brief, it may be observed that all computer applications have to follow many international standards including but not limited to:

- **Security standards:**
  - Security of taxpayers data and information, including leakage
  - Data integrity and protection from tampering
- **Hosting and installation and Backup:**
  - Security patches and system upgrades
  - Firewall protection for server installations
  - Proper backup procedures
  - Standards for web hosting of secure application data including SSL security certificates.
- **No-use of Pirated software applications including operating system Access, Authentication and Authorization Standards**
  - Users of the system be given proper access privileges.
  - Each user be authenticated before authorized to carry out any task
  - Proper authorization standards be in place for each Customs employee
- **In house developed applications**
  - If any application is developed in-house by Customs or is developed by one of their vendors, it also needs to comply with international standards.

In discussions with the management of PRAL, it has been confirmed that the requirements of this Standard stand satisfied in development of WEBOC software and the said considerations are being followed also in the roll out of PACCS/ WeBOC and further development of IT systems in use. There has also been a technical audit of the System by M/S Sidat Hyder and Company approving/ supportive. The Management of PRAL has shared that the said audit has been affirmative of the use of internationally accepted standards used in WeBOC.

The PACCS/ WeBOC System has generally operated smoothly so far, except the power blackout in January this year. There may be some limitation of band-width capacity at peak hours as some stake holders mentioned frequent break downs in the system. The PRAL management is confident that band-width capacity is not a limitation factor and the system issues might have been due to relocation of the system to new site. Its roll out program to customs port at Gwadar and to up-country customs stations is in early phase, being implemented on fast track basis. PRAL management is confident of successfully executing the project as per schedule.

Being an on-going project of vital significance to the economy, it is considered imperative to make some recommendations in connection with sustained, fault-free operations of the WeBOC/ PACCS project in Customs operations.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Shahid Mir, Former Chairman, Pakistan Software Exports Board, Ministry of Communication and Information Technology, Government of Pakistan and Chief Executive Officer of M/S System Research, (Pvt) Ltd Islamabad.
- Mr Atif Mumtaz, Chief Executive Officer Personforce Consulting (Pvt) Ltd. Islamabad (Founder Personforce Inc, USA, and a Reuters Digital Vision Fellow from Stanford University).

*Conclusion:* Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:**

- The budgetary allocation of PRAL must have a provision for repair and up-gradation of installed equipment by making an annual provision of at least 10% of original cost of equipment as needed for repair and up-gradation (such as purchase of new equipment, disc drives, new software, new supporting hardware, bandwidth expansion, power stabilizers etc.). This is essential as technology of ICT is changing very rapidly. The current technology will be obsolete for the purposes of Customs operations in 3 to 4 years.
- If the whole or a part of this budget is not utilized during the year of allocation, it may not be treated lapsed, but carried forward and invested in Government Bonds for probable utilization in replacement of some damaged equipment or on purchase of additional equipment by way of capacity enhancing initiative.
- The Guidelines provided by RKC/ WCO need to be studied and followed.

7.3. Standard	The introduction of information technology shall be carried out in consultation with all relevant parties directly affected, to the greatest extent possible.
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**Overall Assessment:** Compliant

**Relevant law:**

**Discussion:**

*Law:* Before the introduction of the computerized system, One-Customs, very detailed consultations took place with stakeholders over an extended period of time, covering most functional and geographical points. Meetings, seminars and workshops were held before and after launching the system. Stakeholders included trade bodies, Chambers of Commerce, Shipping Agents Association, Freight Forwarders, Customs Agents, Terminal Operators, National Bank, Income Tax and sales tax wings of FBR. After meaningful but lengthy deliberations, most of their concerns were addressed and their business needs duly accommodated. Sister revenue organizations were also closely associated as the ultimate users/beneficiaries and as the major repositories of wisdom on business design as tax managers and strategists. Renowned importers and exporters were consulted/associated at different stages of the process.

Experts in Information technology were also associated at different stages. Experts in Information technology (such as Software Export Board, Systems Ltd, experts in universities of Karachi, Institute of Business Administration Karachi, University of Engineering and Technology Lahore etc.)

The original PACCS in 2005 was based on M/s Agility software and the experience of One-Customs but no extensive discussions, meetings or seminars were held before it was launched. When PACCS was redesigned on WeBOC software after 2010, wide-ranging discussions with trade and operational stakeholders as well as in-house deliberations were conducted. PRAL management is cognizant of the need for such consultations and is regularly responding to feedback from stakeholders in rolling-out the system. Since WeBOC became operational, consultation and feedback from the private sector have led to 700 changes to the system.

This dialogue is going on as a continuous activity and according to senior management of PRAL the system is being further adapted for improving its capacity and efficacy and making it more user-friendly. In the roll out plan, FBR/Customs are fully on board and supportive as per discussions with management.

As stated in the comments on Standard 7.2, PACCS is in process of further expansion and development and being extended to other Customs stations in consultation with stakeholders. However a concrete expansion design and further development plans for the system have not been made available to the public.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Syed Tanvir Ahmed Project Director, Customs House, Karachi.
- Mr. Imtiaz Ali Khan, Chief Executive Officer, PRAL, FBR, Islamabad.
- Mr. Humayun Zafar, Director Automation (Customs PRAL), Islamabad.
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance

with the standard.

**Recommendation:** Despite the fact that the practice is in compliance with the Standard it is recommended that the RKC / WCO Guidelines on the subject be studied and followed.

7.4. Standard	<p>New or revised national legislation shall provide for:</p> <p>Electronic commerce methods as an alternative to paper-based documentary requirements; electronic as well as paper-based authentication methods; the right of the Customs to retain information for their own use and, as appropriate, to exchange such information with other Customs administrations and all other legally approved parties by means of electronic commerce techniques.</p>
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**Overall Assessment:** Partially Compliant

**Relevant law:** Customs Act; (Chapter XVI-A) 155A – 155R

## Discussion:

*Law:* The Standard thus visualizes the evolving, changing nature of Customs Law and procedures. In this Standard two elements in relation to law are significant viz:

- Application of electronic commerce techniques; and
- Sharing of information with other Customs Administrations/other legally approved parties.

Electronic Commerce techniques revolve around all kind of sale purchase transactions. One example is searching web-based information on products, negotiations on internet with short listed suppliers, concluding a deal on Internet and then confirming it by exchange of notes on internet. Another is sales and purchases in auctions on Internet. Third are retail purchases from outlets such as Amazon. Giving legal authenticity to such sale/purchase documentation is required so that the same have validity as a signed document under the law is vital. These deals have also to be supported by validation of financial transactions through credit/debit cards, other emerging forms of money transfer through internet as equivalent equipment of conventional financial transactions. Once fullest legal validity is given to these dealings, the interests of buyers and sellers will be safeguarded and they will be encouraged to conduct business electronically.

The relevant provisions of the Customs Act, (Chapter XVI-A) on computerization, the same are briefly stated below:

155A: Application of the Customs Computerized System (shall be by notification).

155B: Access to the Customs Computerized System. No person shall transmit to, or receive information from, the Customs Computerized System unless that person is registered by the Collector as a user of the Customs Computerized System.

155C: Registered users (Procedure of registration).

155D: Registered users to be allocated unique user identifier.

155E: Use of unique user identifier.

155F: Cancellation of registration of registered user.

155G: Customs to keep records of transmissions.

155-I: Makes unauthorized access to or improper use of the Customs Computerized System and knowingly accessing such information or using it, an offence under the Customs Act.

155J: Makes interference with the Customs Computerized System, an offence –

155K: Offences in relation to the security of or unauthorized use of unique user identifiers.

- 1) A registered user of the Customs Computerized System who fails to comply with or acts in contravention of any condition imposed by the Collector relating to the security of that registered user's unique user identifier commits an offence.
- 2) A person who commits an offence-
  - a) not being a registered user, uses a unique user identifier; or
  - b) being a registered user, uses the unique user identifier of any other registered user;

- c) to authenticate a transmission of information to the Customs Computerized System,

155L: Customs may audit or examine records of any registered person (importer/exporter).

155M: Customs may requisition documents from registered person.

155N: Customs may require English translation of any document in foreign language.

155O: Authorized officer may take possession of and retain documents and records of registered person.

155P: Makes acts of obstructing access to, altering, concealing or destruction of, record, an offence.

155R: Makes correction of clerical errors permissible, if Collector is satisfied and he allows it.

These provisions need to be supplemented by new provisions accepting validity of internet correspondence as the basis of a commercial transaction for purposes of valuation and assessment. This may require changes in laws relating to foreign exchange, income tax and sales tax Qanoon-e-Shahadat PPC (Pakistan Penal Code) and the Import and Export (Control) Act etc. As the following notes show, electronic commerce techniques will bring a number of features to trading transactions which will promote documentation and thus strengthen the foundations of the economy.

It will need to be refined to protect confidentiality of data relating to any one transaction and to the data which relate to only one trader. Sharing of data as aggregates, as denominators of broad trends alone could be considered for sharing with other Customs administrations and legally approved parties. The Customs law has this confidentially provision in place.

## Notes on e-commerce and confidentiality framework of law:

- i. Electronic commerce is critical for the growth of commerce between b2b and b2c. Already b2b is worth 3 trillion dollars annually. This year the Black Friday sales for b2c were worth 1 billion dollars.

Internationally approved standards which are used in such projects in Pakistan, already exist worldwide which software scientists/engineers apply appropriately as per requirements of the software programs being developed and configured. In the normal course this is the responsibility of the State Bank of Pakistan and Ministry of Commerce. But FBR/Customs, are preparing to shoulder expanded responsibilities in relation to the new mode of commercial and financial transactions. It has, therefore, to trigger the processes for the laying down the regulatory framework by the Government. The usage of internationally accepted standards in these processes cannot be effectively realized unless FBR/Customs takes a pro-active position. FBR and these organizations are in the best position to work towards internationally accepted standards.

- ii. It is worthwhile to note that a major advantage in properly developed e-commerce architecture is that all such transactions will have to use legal channels, thus making them easy to track and amenable to tax. It will also discourage and eventually replace a major chunk of cash-based transactions, thus minimizing the sweep of black economy.
- iii. The new or revised legislation on e-commerce methods as an alternative to paper-based methods has fairly developed worldwide. The values of e-commerce businesses have already crossed U.S. Dollar 3 trillion during 2010. These applications also underscore use of internationally accepted standards with regards to various aspects of B2B or B2C communications which terminate in commercial transactions creating obligations and rights on either side and involve paperless money transactions and cross border money transfers. Communication security and confidentiality have to be fully addressed to keep the integrity of the communications intact at both ends.

- iv. Authentication methods have to be reliable so that e commerce is accomplished smoothly in secure and integrated environment.
- v. The issues of rights over information, the confidentiality thereof and its sharing with other governments, for any purpose, are important but sensitive issues which FBR/Customs have to address. Public concern on this matter is likely to grow. International developments in legislation and changing practices in other countries have also be studied to further refine and improve the design of IT related law.
- vi. The law on these aspects is in a nascent phase even in the developed world, As such, more serious questions regards framing of new legal frameworks are expected to arise in the future. Therefore, national legislation formulation has to be an on-going process in consultation with stake holders and experts.

The Customs law as briefly stated above is for the present, in partial compliance with the Standard. But it has to be expanded, refined and amended as electronic commerce techniques are put in wider use and as Customs consider to share its computerized data with other Customs administrations and/or other legally approved parties. For this reason some recommendations are made in this regard.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource persons:

- Syed Tanvir Ahmed, Project Director Customs House, Karachi.
- Mr. Imtiaz Ali Khan, CEO, PRAL, FBR, Islamabad.
- Mr. Humayun Zafar, Director Automation (Customs PRAL), Islamabad.
- Mr. Zahid Ali Baig, Additional Collector of Customs, MCC, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the standard.

**Recommendations:**

- FBR/Customs may consider initiating a dialogue with SBP (State Bank of Pakistan), Ministry of Commerce and other stake holders for accelerating the process of laying down wider procedural and regulatory framework for facilitating use of electronic commerce techniques in Pakistan as a part of preparing the operative platform for paper less system of goods processing through Customs.
- Authentication Techniques/methods of electronic commerce may be adopted for use in validation/ verification of transaction values of various types.
- In retail transactions of exports/imports, the procedure relating to customs clearance and value assignment reviewed so as to modify the existing provisions of the Customs Act, 1969, to give proper legal cover to all such transactions.
- Law on sharing of information with other Customs administrations and other legally approved parties may be developed in context of the law as it is evolving globally but giving fullest consideration to protecting confidentiality of information of individuals (legal and natural person).

## Chapter 8: Relationship between the Customs and Third Parties

8.1. Standard	Persons concerned shall have the choice of transacting business with the customs either directly or by designating a third party to act on their behalf.
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**Overall Assessment:** Compliant

### Relevant Law:

- The Customs Act; Sections 79, 81, 104, 121, 139 and 207.
- The Customs Rules; (Notification Number SRO 450(1) 2001 dated 18-06-2001; Rules 90 to 106 (Chapter VIII)

### Discussion:

*Law:* This Standard requires that persons concerned with Customs shall have the choice of transacting business with Customs either directly or by designating a third party to act on their behalf.

Under various provisions of the Customs Act, 1969 the person concerned may transact business directly with Customs such as owner of the goods may file Goods declaration (under section 79), and may pay duty [Section 79 (I)(b), 81, 104, 121 and 139].

Under section 207, Customs may grant licenses to Customs agents in accordance with rules 90 to 106 (Chapter VIII) of the Customs Rules, 2001. These Rules define the scope of 'Customs business' and requires a person to pass a test to become eligible for a license, specify conditions for license, its renewal, relevant procedure, obligation to attend training courses, maintain record, responsibilities of licensee and action in case of violation and right of appeal when license is revoked.

Once a license is granted to a person to work as a Customs Agent, he may perform duties as Customs clearing agent and / or Customs shipping agent at any Customs station, airport or port and transact business with Customs on behalf of any person.

When an agent performs such business with Customs on behalf of owner, the concerned officer of Customs may ask him, under section 208 of the Act, to produce authority under which he is transacting business on behalf of the owner or principal. Sections 209 and 210 provide for liability of agent and principal. Section 155C requires a person to be registered with Customs under the PaCCS. Once registered under this section, a Customs agent may then be able to conduct business with Customs on behalf of a principal under the Computerized System whether for clearance of ships/conveyance or of goods meant for import or export or clearance of un-accompanied baggage of passengers.

In case of a business, an authorized employee may also conduct business with Customs but, if asked by the Customs Officer, he must produce authorization from the owner or the company in this behalf as provided for in section 208 of the Act.

Beside Customs Agents, Attorneys at law (Advocates) and Customs consultants also transact business with Customs on behalf of importers, exporters, passengers as well as owners, masters and persons in-charge of ships, carriers and conveyances in matters of procedural requirements, disputes, regarding taxes and violations of Law/Rules.

Attorneys at law, they may be required to produce a power of attorney and if a consultant appears before the Customs officer to transact any business on behalf of an owner/company he may be asked by the officer to produce authorization in writing.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Ibrahim Vighio, Collector of Customs, MCC, Quetta.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Dr. M. Syed Jadoon, Additional Collector, MCC, Peshawar.
- Mr. Wajid Ali Deputy Collector of Customs Port Qasim.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:** No recommendations are deemed necessary at this time.

## 8.2. Standard

National legislation shall set out the conditions under which a person may act for and on behalf of another person in dealing with the Customs and shall lay down the liability of third parties to the Customs for duties and taxes and for any irregularities.

**Overall Assessment:** Compliant

### Relevant Law:

- The Customs Act; Sections 207 and 209.
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18-06-2001: Rules 90 to 106 (Chapter VIII).
- Customs General Order 12/2002

### Discussion:

*Law:* The Standard requires national legislation to set out the conditions under which a person may act on behalf of another person dealing with Customs and lay down in liability of such third party.

The Customs Act has provisions under section 207 to grant licenses to customs clearing agents and to shipping agents and under section 209 to lay down the liability of agents / representatives / authorized persons. Customs Rules, 2001 in Chapter VIII thereof, lay down conditions for licensing of Customs agents (customs clearing agents and customs shipping agents).

Rule 91 *ibid* relates to filing an application for obtaining a license and Rule 92 *ibid* states conditions of eligibility of a person to apply for a license. Under Rule 93 of the said Rules, the procedure for a qualifying test is prescribed, Rule 94 deals with approval of license on deposit of security etc. Rule 95 *ibid* specifies the conditions of license such as it is initially granted for two years and is renewable after every two years under Rule 96 *ibid*. Rules 97 and 98 of the rules relate to procedures whereas Rule 99 requires a licensed custom agent to attend a six-day mandatory training course once in every two years and Rule 100 *ibid* requires him to maintain records.

Rule 101 prescribes Agent's responsibilities from (a) to (u). Rule 102 prescribes procedure regarding action to be taken against an Agent in case of violation and specifies that his license may be revoked and, in addition his security may be forfeited in whole or in part for the settlement of any duty, taxes and other charges due from him after issuing him a Show Cause Notice by the licensing Authority, giving him reasonable opportunity of defense and passing a written order. Rule 103 of the Rules provides for right of appeal to the Agent to be filed to the Chief Collector of Customs. Rule 105 *ibid* deals with other conditions when license shall stand revoked.

If Customs brings charges against a shipping agent or a customs agent for an alleged violation of Customs law, the agents are invariably required to show cause why penal action should not be taken against them. Duties and taxes are however demanded in such cases only from the principle. Liability of third parties is provided for in sub- section (2) and (3) of section 209 of the Act, reproduced below:-

(2). Where this Act requires anything to be done by the principal and if any such thing is done, by an employee or representative expressly authorized by the principal under sub-section (2) of section 208, unless the contrary is proved, shall be deemed to have been done with the knowledge and consent of such principal so that in any proceedings under this Act, the principal shall be liable as if the thing had been done by himself.

(3). When any customs agent is expressly authorized by the principal to be his agent under sub-section (1) of section 208 in respect of such goods for all or any of the purposes of this Act, such agent shall, without prejudice to the liability of the principal, be deemed to be the principal of such goods for such purposes:

Provided that where any duty is not levied or is short-levied or erroneously refunded on account of any reason other than willful act, negligence or default of the agent, such duty shall not be recovered from the agent.

*Practice:* Customs agents are the main service provider class in relation to goods meant for export or which have been imported. They normally conduct business on behalf of shipping companies and owners of goods in accordance with the Act and the rules made thereunder.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource person:**

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate Tribunal, Karachi.
- Mr. Nasir Chandana, Custom Clearing Agent, Custom House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the standard.

**Recommendations:**

- The term “Customs practitioner”, which was earlier defined (since 1977) under Section 2 of the Customs Act, 1969 and had later on omitted (in 2006), may be re-introduced in the Act, in order to make Pakistan's Customs regime fully compliant with this Standard. This will entitle, on one hand, a Customs practitioner to appear before the Customs authorities and to act for and on behalf of another person, if engaged by that person and, on other hand, will enable the Customs authorities to regulate his conduct as a Customs practitioner.
- If above recommendation is agreed to, Customs General Order 12/2002 (the CGO) may also be modified by adding a general order, for regulating the conduct of business by a Customs practitioner.

8.3. Standard	The Customs transactions where the person concerned elects to do business on his own account shall not be treated less favorably or be subject to more stringent requirements than those Customs transactions which are handled for the person concerned by a third party.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act

**Discussion:**

*Law:* This Standard requires that if a person himself wants to conduct business with Customs, he should not be treated less favorably or subjected to more stringent conditions.

The Customs Act does not contain any provision enabling Customs to discriminately treat any person who wants to transact business with Customs directly. On the other hand it gives a right to Master of ship or conveyance and declarant or owner of Goods or importer or exporter of Goods to report to Customs or file Goods Declaration or to file other documents in connection with conveyance or ship or goods or baggage. The person or a third party are treated at equal level and given same rights and treatment in doing business with Customs.

*Practice:* This has been discussed with Customs officials at different Customs stations, airports and at sea ports. They have been unanimous in subscribing to the view that a person doing business with the Customs on his own account is treated the same way as an agent or third party is treated. He is not discriminated against in any manner.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Dr. Asif Jah, Additional Collector of Customs, MCC (Preventive), Lahore.
- Mr. Qurban Ali Khan, Additional Collector of Customs, MCC Islamabad.
- Mr. Yaqoob Mako, Additional Collector of Customs, MCC, (Preventive), Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

## 8.4. Standard

A person designated as a third party shall have the same rights as the person who designated him in those matters related to transacting business with the customs.

**Overall Assessment:** Compliant

### Relevant Law:

- The Customs; Section 207
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18-06-2001: Rules 90 to 106 (Chapter VIII).

### Discussion:

*Law:* The Standard requires that a person designated as third party to do business with Customs on behalf of a person shall have the same rights as the owner. In other words he shall not be treated less favorably in comparison to the person (owner) who designated him.

Unless a person holds a license granted to him as a customs agent in accordance with Section 207 of the Customs Act and the relevant rules, he cannot act on behalf of a principal in transacting any business with Customs. The person has to have license as a customs agent (customs clearing agent or customs shipping agent) under the Customs Rules, 2001 (SRO 450(I)/2001 dated 18.06.2001). The relevant Rules are from Rule 90 to Rule 106, all contained in Chapter VIII of the said rules. Rule 92 relates to the eligibility of a person to apply for license whereas rule 93 provides for qualification test and rules 94, 95 and 96 pertain to approval of license, its conditions and renewal respectively. Rule 99 requires agents to attend a 6 day mandatory training course every year.

A principal is thus empowered to designate a customs agent (a third party) to act on his behalf in conducting any business with Customs whether relating to any business of arrival or clearance of a ship or conveyance or the clearance of any goods or baggage. The Act and the rules made thereunder do not impose any conditions on the third party which the principal will not be required to satisfy if he were to conduct that business with the Customs himself. In brief both the principal and the customs agent have the same rights and privileges during the course of conducting business with the Customs.

*Practice:* In practice Customs treats the person himself conducting business with Customs and the third party which may be designated by a person to act on his behalf to conduct business with Customs, in the same manner.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

### Resource persons:

- Mr. Zulfiqar Kazmi Collector of Customs, MCC, Peshawar.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Mr. Iqbal Muneeb, Additional Collector of Custom MCC, Appraisement.
- Mr. Nasir Chandana, Custom Clearing Agent, Custom House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

## 8.5. Standard

The Customs shall provide for third parties to participate in their formal consultations with the trade.

**Overall Assessment:** Partially Compliant

### Relevant law:

### Discussion:

*Law:* Generally, Customs Clearing Agents and Shipping agents licensed under section 207 of the Customs Act transact business with Customs on behalf of importers, exporters etc. These Agents are skilled professionals providing services at Ports/Customs stations.

### *Practice:*

Customs consider agents as important stake holders. Customs clearance and related operations regularly involve input from customs agents. Therefore, their competence, conduct and substantive input in customs clearance (ships, vessels, carriers and goods) is of vital importance to the quantum and quality of work performed by the Customs. Customs agents, in a way, represent the entire spectrum of trade and business and are an effective link for Customs to communicate with the trade in matters related to customs clearance procedures.

Presently customs clearing agents and customs shipping agents are consulted by the Collectors of Customs regarding issues related to classification of goods, valuation, clearance procedures, hardship cases and facilitation. FBR also invites and considers the views of the Customs Agents Associations (shipping/clearing) relating to tariff changes, other policy matters in relation to goods and ships, vessels and carriers. When Customs require, they also hold meetings with them and they are also invited in FBR's meetings with Federation of Pakistan Chambers of Commerce and Industry or with the regional Chambers of Commerce and Industry, such as Karachi Chambers of Commerce and Industry or KCCI and Lahore Chambers of Commerce and Industry or LCCI.

But moving forward, the Customs may consider developing more formal and binding relationships with these Associations, requiring them to conduct business within defined and approved parameters of law and ethics in exchange for Customs to deliver services with assurance of high speed, transparency and in spirit of facilitation. These understandings may include setting up of goals, target to be achieved in given time; schedules for performance reviews; preparing new/revised procedures and revised objectives; and new goals and targets.

This process will involve preliminary research, preparatory deliberations which have to be painstaking and demand patience and perseverance and could be conducted directly or through third party, leading to a final negotiating framework and finalization of MOUs.

### Resource person:

- Mr. Muhammad Yahya, Director Intelligence and Investigation, Karachi (Now Chief Collector of Customs).
- Mr. Ibrahim Vighio Collector of Customs, MCC, Quetta.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the Standard.

### Recommendations:

- FBR/Customs may consider to sign formal MOUs with Associations of Customs Clearing

Agents (Brokers) and Customs Shipping Agents, for better facilitation of the trade in a conducive environment, adhering to best professional and ethical standards, always conducting business within the framework of law and in the best national interest and to the satisfaction of carriers, importers, exporters and other stake holders.

- In doing so, in the preparatory process, FBR/Customs may involve third parties to deliberate with the Associations of Customs Clearing and Shipping Agents to enter into appropriate relationship with Customs.

8.6. Standard	The Customs shall specify the circumstances under which they are not prepared to transact business with a third party.
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**Overall Assessment:** Compliant

**Relevant Laws:**

- The Customs Act; Section 207
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18.06.2001: Rules 102 and 105

**Discussion:**

**Law:** The Customs Act or the rules made thereunder do not expressly preclude Customs from transacting business with third parties. However, transacting business with Customs Agents in their capacity as Custom Clearing Agents or Customs shipping agents is subject to rules issued by FBR under chapter VIII of the Customs Rules, more specifically, Rule 90 to Rule 106.

In these rules, Customs Agents must be licensed and their licenses are revocable under rules 102 and 105 *ibid*. Once a license is revoked, an agent loses his capacity to act as Agent and, therefore, Customs will not, in such circumstances, be legally bound to transact business with him as third party in view of the provisions of section 207 of the Customs Act, 1969, which are reproduced below for convenience of reference\_

**207. Customs-house agents to be licensed.** No person shall act on behalf of any principal for the transaction of any business relating to the entrance or departure of any conveyance or any customs clearance related activity or the import or export of goods or baggage at any customs-station unless such person holds a licence granted in this behalf in accordance with the rules as a customs agent.

**102. Action in case of violations.-** (1) The licensing Authority may revoke or suspend a license or permit of any Customs Agent for one or more than one of following reasons, namely:-

(a) the licensee has made or cause to be made in any application for any license or permit under this chapter, or report filed with the customs, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report; (b) the licensee has been convicted at any time for larceny, theft, robbery, extortion, forgery, counterfeiting, fraud concealment, embezzlement, fraudulent conversion, or misappropriation of funds; (c) the licensee has knowingly employed, or continues to employ, any individual who has been convicted of any offence referred to under clause (b); or (d) the licensee has, in the course of its customs business, with intent to defraud, in any manner, wilfully and knowingly deceived, misled or threatened any client or prospective client. (e) violation by the licensee of any provision of Act or the rules, regulations, notifications, instructions or orders issued there under; (f) aiding or abetting any individual, firm or company, as the case may be, for violation of any provision of the Act or the rules or regulations made there under; (g) negligence or inefficiency of the licensee in the discharge of its obligations; (h) unsatisfactory conduct of the licensee while transacting customs business or in relation to any person who has entrusted it with any customs business; (i) failure of the licensee to comply with any of the bond executed by him under this chapter; (j) concealing, removing or destroying by the licensee of its financial and customs business records or refusing to allow an officer of customs to inspect them and take extracts there from; (k) attempt by the licensee to influence the conduct of any employee in the custom house, custom station, port or airport by the use of force, intimidation, false accusation, duress, bribery or by offering any special inducement or gift; (l)

failure of the licensee to exercise due diligence and due care to apprehend and forestall an untrue declaration in respect of description, content, sort, classification, origin, quality or value of the imported or exported goods by its client; (m) withholding by the licensee of any information, document or other evidence from an officer of customs which is likely to prevent any fraud or evasion of customs duties and other taxes or dues and the circumvention or contravention of any restrictions imposed by any law for the time being in force; (n) the licensee has defaulted in making payment of duties and taxes received from their client in time, if any; (o) the licensee's previous performance has not been satisfactory or has not been true to the customs or towards his clients; or (p) the licensee's previous record of customs business due to his being concerned in any customs offence is not free from reasonable doubt.

(2) In case of revocation of a licence under sub-rule (1), the licensing Authority may, after issuing show cause notice to the licensee, forfeit the whole or part of the security deposited by the licensee under rule 95 for the settlement of any duty, taxes or any other charges due from him.

(3) The Collector or the licensing Authority, as the case may be, shall not pass any order under sub-rules (1) and (2) to revoke the license or permit unless the licensee is informed in writing regarding the allegations and opportunity of hearing is afforded. While passing an order for revocation of licence, the Collector or the licensing Authority, as the case may be, may also direct forfeiture of the security deposited by the licensee under rule 95.

(4) The licensing authority may, in cases where immediate action is considered necessary against the licensee, suspend his license forthwith after recording reasons in writing pending the final action under the Act and rules made thereunder."

It may, however, be noted that the Customs Rules, 2001, also provide a right to a person whose license has been revoked to file an appeal with the Chief Collector of Customs. If his appeal succeeds, the order of revocation will be quashed and his license will stand restored.

**105. License stands revoked.**- A license shall stand revoked, if the licensee,- (a) is declared insolvent or convicted by a court of law for any offence punishable under the Act or for an offence involving moral turpitude or misappropriation of property or breach of trust under the Pakistan penal Code, 1860 (Act XLV 1860) or any other law for the time being in force; (b) is involved in a case of tax fraud under any law for the time being in force; (c) on failure of renewal of license for consecutive five years of last renewal; or (d) upon filing of an application for cancellation of its license.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Yahya, Director Intelligence and Investigation Karachi (Now Chief Collector of Customs).
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.
- Mrs. Zeba Hayee, Collector of Customs MCC, Lahore.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

## 8.7. Standard

The Customs shall give written notification to the third party of a decision not to transact business.

**Overall Assessment:** Compliant

### Relevant law:

- The Customs Act; Section 207.
- The Customs Rules; (Notification Number SRO 450(1)2001 dated 18-06-2001: Rules 102 and 105.

### Discussion:

*Law:* Customs agents are licensed under Section 207 of the Customs Act. Rules 102 and 105 of Customs Rules provide detailed provisions for revocation of licenses of Customs Agents who normally transact business with customs as third party. The licensing authority is required by Rule 102 to pass order of revocation which will be conveyed to the Agent. Rule 103 provides that any customs agent, aggrieved by any decision or order to this effect may prefer an appeal with the Chief Collector of Customs having jurisdiction within sixty days of the passing of such decision or order. For convenience of reference rule 102 is reproduced below:

#### **102. Action in case of violations.-**

(3) The Collector or the licensing Authority, as the case may be, shall not pass any order under sub-rules (1) and (2) to revoke the license or permit unless the licensee is informed in writing regarding the allegations and opportunity of hearing is afforded. While passing an order for revocation of license, the Collector or the licensing Authority, as the case may be, may also direct forfeiture of the security deposited by the licensee under rule 95.

(4) The licensing authority may, in cases where immediate action is considered necessary against the licensee, suspend his license forthwith after recording reasons in writing pending the final action under the Act and rules made thereunder.”

Similarly revocation automatically takes place under Rule 105 which is reproduced below:

#### **105. License stands revoked.** A license shall stand revoked, if the licensee,

- Is declared insolvent or convicted by a court of law for any offence punishable under the Act or for an offence involving moral turpitude or misappropriation of property or breach of trust under the Pakistan Penal Code, 1860 (Act XLV 1860) or any other law for the time being in force;
- Is involved in a case of tax fraud under any law for the time being in force;
- On failure of renewal of license for consecutive five years of last renewal; or
- Upon filing of an application for cancellation of its license.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

### Resource person:

- Mr. Muhammad Aamir, Collector of Customs, MCC PaCCS, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical) Customs Appellate, Tribunal, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No Recommendations are considered necessary at this time.

## Chapter 9: Information, Decisions and Rulings Supplied by Customs

9.1. Standard	The Customs shall ensure that all relevant information of general application pertaining to customs law is readily available to any interested person.
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**Overall Assessment:** Partially Compliant

### Relevant Law:

- The Customs Rules; (Notification No. 450(I)/2001 dated 18-06-2001: Rule 530.
- Customs General Order (CGO) No.1 of 2010 dated 24-02-2010.
- The Federal Board of Revenue Act; Section4(c)(u)
- The Freedom of Information Ordinance; Section 7

### Discussion:

*Law:* The Standard provides that Customs shall ensure that if a person is interested to get relevant information of general application, it is readily available to him.

Rule 530 requires regulatory agencies to update PACCS at source with any changes to legislation, procedures, quota debits, tariff changes, etc.

*Practice:* The FBR/Customs publishes legislation, forms, guides and procedures online and in hard copy.

**FBR Website:** [www.fbr.gov.pk](http://www.fbr.gov.pk) The above stated information is also available on the website of FBR which provides relevant information and texts of statutes, notifications, rules and procedures about all duties/taxes. This information is with respect to the four major taxes which FBR administers namely, Customs, Sales Tax, Income Tax and Federal Excise Duty. Publication of hard copies of information is limited.

**Customs Website:** [www.cbr.gov.pk](http://www.cbr.gov.pk) The Customs website contains updated information and text of the Customs Act 1969 and the rules made thereunder, Pakistan Customs Tariff, Notifications, General orders, revenue collection figures, forms and FAQ's etc. The website also contains relevant information which is generally required by the users. However, comparison of this website with another country's website indicates that it needs to be made more user friendly and its coverage/links be widened.

**PRAL's Website:** [www.pral.com.pk](http://www.pral.com.pk) Pakistan Revenue Automation Ltd (PRAL), the software Technology arm of FBR/Customs, also maintains an interactive web-site. It provides a wide variety of information for tax-payers.

Information about customs law, procedures, tariff rates and notifications is available in FBR's annual publications generally issued after passing the Annual National Budget. The Customs Act, 1969 and the Tariff Schedule are only available at FBR headquarters for the public. Public access to the FBR building is, however, restricted. These are however issued by some private companies regularly and are available in the market to any interested person/s. Key documents published by FBR/Customs include the following:

'Pakistan Customs Tariff' is published by "Printing & Publication Section, Customs Wing", FBR, Islamabad which comprises two volumes. Volume 1 contains full information about description and classification of goods, rates of customs duty as well as information on other taxes (sales tax, withholding tax and federal excise duty etc.) which are applicable to goods on importation. 'Pakistan Customs Tariff' also contains information about the Import Policy Order of the Government as it

applies to all types of goods that may be imported. Other information in this volume relates to duty and tax exemptions as well as concessions under various Free Trade Agreements.

'Pakistan Customs Tariff' Volume II contains information about Customs Notification and Rules along with Import related Notifications of Federal Excise, Sales Tax and Withholding Tax, and other taxes (sales tax, with-holding tax and federal excise duty etc.) which are collected on imports. This volume also contains information on different Baggage Rules for the benefit of passengers and overseas Pakistanis. The Baggage Rules and other passenger related Customs facilitation measures are also displayed at airports, land Customs stations and at sea ports. Pakistani missions in foreign countries also provide information in the form of brochures and booklets to the interested persons/overseas Pakistanis.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law. Hard copies of the law and tariff schedule are only available from FBR headquarters while websites need to be expanded and regularly updated.

### Resource persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.
- Mr. Muhammad Jamil Khan, Law Officer, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the Standard.

### Recommendations:

- Printing & Publication Section be revamped with frequent publications, in adequate numbers, covering all the legislation (Customs Act, 1969 and sub-ordinate legislation i.e. Notifications under various sections thereof and ii. Rules made under section 219 *ibid*), administrative guide-lines, procedures and practices, inter alia, in shape of Orders/Circulars and Standing Orders etc. The Section should also update and publish all the relevant legislation, e.g. the one covered under sections 15, 16 and Chapter V of the Customs Act, 1969.
- All the publications be readily available at all the Customs Stations and book stalls. All the relevant forms, e.g. G.D. forms, be readily available, to an interested person.
- All the publications (other than forms) be updated on a regular basis. In the meantime, the amendments should also be published and appropriately advertised on the web and also prominently displayed at all the Customs stations.
- All the forms be updated as and when changed and be made available in the modes already discussed.
- The "Printing and Publication Section" in Customs Wing of FBR may also be made responsible for making available all the material as referred-to hereinabove, in soft, as well. Same may also be made available for sale at all the Customs stations.
- Relevant information regarding customs is available on FBR's website like Customs Act, 1969, rules, notifications, general orders, tariff, classification rulings, Valuation Rulings, etc. However, a lot of information is still to be placed on the website.
- Since the term "relevant information" includes information on other laws administered by Customs, thus the relevant laws need to be linked with the website.
- Information of general interest may also be put on the website, e.g.:
  - Chassis and engine numbers of the vehicles, cleared from Customs each month will help the public to check the genuineness of a vehicle intended to be bought and will also help other government agencies in their functions, e.g. Inland Revenue department and Motor Registration Authority (MRA).

- Expenditure incurred by FBR/Customs in a fiscal year under various heads of accounts may be displayed on the website so that a tax payer may have added confidence and trust as to utilization of his/its money.
- Important Rulings of the Supreme Court of Pakistan, on various issues.

In order to achieve all the above, it is also recommended that the CGO 12/2002 may be amended by adding an Order, providing for above.

9.2. Standard	When information that has been made available must be amended due to changes in Customs law, administrative arrangements or requirements, the Customs shall make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of them, unless advance notice is precluded.
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**Overall Assessment:** Non-Compliant

**Relevant Law:** No relevant legislation

## Discussion:

**Law:** The requirement of the Standard is that in case the available information is to be amended due to changes in Customs Law, administrative arrangement and requirements, it is the duty of Customs to make the revised information readily available sufficiently in advance of the entry into force of the changes to enable interested persons to take account of these, unless advance notice is precluded. The revised information is generally not made available in advance of the amendment or changes coming into force. No legal provision exists to require giving notice in advance of such amendment or revision in the existing information.

**Practice:** According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

## Resource persons:

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Qurban Ali Khan, Additional Collector of Customs, AFU, Islamabad.
- Dr. Imran, Assistant Collector, Customs, AFU Exports, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the Standard.

**Recommendations:** The FBR/Customs publish any amendments to legislation, procedures, forms, etc. through print/electronic media at least 15-20 days in advance of the date the changes take effect. Longer periods of advance notice will be appropriate for changes requiring greater compliance investment by traders. Budgetary changes and changes having retrospective effect or those having revenue implications may be excluded from such advance notice.

9.3.Transitional Standard	The Customs shall use information technology to enhance the provision of information.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Sections 155A to 155R.
- The Customs Rules; (Notification Number SRO 450(I)/2001 dated 18-06-2001: Rules 422 to 556.

**Discussion:**

*Law:* FBR/ Customs is using information technology in processing of goods clearance, and generating statistics on revenue and trade. IT is also being applied for enhancing the provision of information to people at large and in particular to trade and industry as well as other stake holders. The regulatory mechanism for computerization of Customs processes is given in sections 155A-155R (Chapter XVI-A) of the Customs Act, 1969, and the rules made thereunder (Rules 422 to 556).

*Practice:* As discussed under Standard 9.1 FBR/Customs provides information on legislation, procedures and guides online:

**FBR's Website:** For making information accessible to public at large, FBR has developed a website on which updated information on Customs law, rules, procedures and facilitation is available. This information covers the four major taxes which FBR administers namely, Customs, Sales Tax, Income Tax and Federal Excise Duty. It shows information and texts of statutes, notifications, rules and procedures.

**Customs Website:** this site contains information and text of Customs Act 1969 and the rules made thereunder, Pakistan Customs Tariff, Notifications, General orders, revenue collection figures, forms and FAQ's etc. The website contains all relevant information which is generally required by the users. However, comparison of this website with Indian (which has similar social structure and the economy of which is in same stage of economic development) website indicates that it needs to be made further user friendly and its coverage/links be widened.

**PRAL's Website:** Pakistan Revenue Automation Ltd (PRAL), the software Technology arm of FBR/Customs, also maintains an interactive web-site. It provides a wide variety of technical information for tax-payers, in addition to that available on FBR web.

**Revenue and Trade Statistics:** Computerization is also being applied to generate statistical information of import and export data as well as on revenue collections of duties, sales tax, withholding tax, and federal excise duties. In this way it has become a vital updated data base for strategic decision making, policy formulation and for numerous applications by trade and industry. But as FBR's website does not depict trade statistics analytically, the public cannot benefit from this data.

**Resource persons:**

- Syed Tanvir Ahmad Collector of Customs, MCC, Port Qasim, Karachi
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Ahmad Atif, CEO, Person Force (Pvt.) Limited, 510, st. 9 F-10/2, Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the Standard.

**Recommendations:**

- An Urdu version of the website for easy comprehension by the general public.
- A list of Customs defaulters as well as good tax payers.
- The facility of SMS query, help-mail document tracking etc.
- A comprehensive and updated contact list of senior officers of FBR and all Collectorates i.e. Assistant Collector and above.
- The facility of Customs duty calculator for the benefit of importers and in-coming passengers.
- Facilitation guides for tax-payers already available on website; updated on monthly basis.
- All draft SROs/Customs General orders be placed on the website seeking comments from the general public.
- Trade Statistics.

9.4. Standard	At the request of the interested person, the Customs shall provide, as quickly and as accurately as possible, information relating to the specific matters raised by the interested person and pertaining to Customs law.
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**Overall Assessment:** Partially Compliant

**Relevant law:**

- The Customs Act

**Discussion:**

*Law:* The Standard requires that on request of an interested person Customs shall provide information on Customs law as quickly and as accurately as possible.

*Practice:* Customs response time to such requests is not always rapid. Though the Customs has established help-lines, websites and customer centers at various Customs stations, the information needed by individuals is not given as promptly and efficiently as desired. There are also complaints of inaccuracy of the information given. Formal mechanisms for receipt and response of requests from trade need to be devised along-with putting in place a procedure to monitor compliance. For this purpose Standard Operating Procedures need to be devised and notified. Provisions in the law along with administrative measures are required to bind the Customs to provide information relating to the specific matters raised by the interested person as quickly and as accurately as possible.

In view of the discussion above of Standard 9.1 and the requirements of Appendix-I of the RKC (Preamble- "the provision to interested parties of all the necessary information regarding Customs laws, regulations, administrative guidelines, procedures and practices") it is clear that Customs is only partially compliant in both law and practice with Standard 9.4.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Amir Muhammad Khan Marwat, Chief Collector of Customs (South), Custom House, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the Standard.

**Recommendations:**

- A Customs General Order may be issued, devising Standard Operating Procedure (SOP), inter alia, requiring appropriate officers to respond to requests of interested persons for information related to Customs matters promptly, to provide accurate information as may be requested by a person and to ensure proper compliance of the provisions of the Freedom of Information Ordinance, 2002.
- A monitoring mechanism for performance evaluation may also be devised.

9.5. Standard	The Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of.
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**Overall Assessment:** Non-Compliant

**Relevant Law:** no relevant legislation

**Discussion:**

*Law:* This Standard requires that the Customs shall supply not only the information specifically requested but also any other pertinent information which they consider the interested person should be made aware of.

Pakistan has neither legislation nor procedure giving effect to this Standard. Customs authorities have no formal arrangements to respond to requests and provide further relevant information. The result is that interested person may or may not receive the appropriate information as well as some more relevant information related to what has been sought.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Dr. Asif Mehmood Jah, Additional Collector of Customs, MCC, Preventive (Lahore)

**Conclusion:** Based on the above research, it appears that the law and practice are not in compliance with the Standard.

**Recommendations:**

- FBR/Customs may consider to redesign this service function, to devise 'Standard Operating Procedure' (SOP) and create an appropriately staffed and equipped Information Cell in each Collectorate of Customs and to provide appropriate training in communication skills to the personnel manning this cell.
- A Customs General Order (CGO) may be issued, accordingly.
- Additionally, the recommendations made while commenting on Standards 9.2 and 9.4 are also relevant and applicable to this Standard.

9.6. Standard	When the Customs supply information, they shall ensure that they do not divulge details of a private or confidential nature affecting the Customs or third parties unless such disclosure is required or authorized by national legislation.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Section 155H

**Discussion:**

*Law:* Section 155 H of the Customs Act, 1969 (the Act), provides for the confidentiality of information, as follows:

155H. Confidentiality of information: All trade information gathered by Customs during clearance of goods shall be confidential and shall not be used except for –

- a) Statistical purposes by the department and other Government organizations; or
- b) Purposes of comparison and evidence by the appropriate officer of customs as against other imports and exports; or
- c) Production as evidence before a legal forum or an organization explicitly so authorized by the Federal Government; and any disclosure, publishing or dissemination of trade information of any person except as provided above without his explicit permission to any other person shall be an offense.

Disclosure of information of a confidential nature is an offense punishable under clause (100) of section 156 (1) of the Act, making a person liable to a penalty not exceeding 200,000 Rupees and, on conviction before a special judge, to imprisonment for a term not exceeding three years or both. The FBR/Customs have thus the discretion to proceed against the delinquent officials and abettors departmentally or to prosecute them in the court of Special Judge having jurisdiction under section 185-A of the Act.

*Practice:* Generally it is the policy of Customs that confidential or private information is not shared with unauthorized persons. Customs officials may only provide non-confidential information to traders in the ordinary course of business. There are instances of confidential information relating to an exporter or importer being leaked by Customs officials to competitors.

According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Asif Mehmood Jah, Additional Collector, MCC, Preventive (Lahore)
- Mr. Saeed Jadoon, Additional Collector, MCC, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are partially compliant with the Standard.

**Recommendations:**

- FBR/Customs strengthen its design and enforcement of the security mechanism for preventing such breaches of confidentiality and to take strict administrative action to thwart such leakages of confidential nature.

- FBR/Customs take disciplinary action against delinquent officials and where reasonable evidence of connivance exists, to prosecute the offenders in the court of Special Judge having jurisdiction.

9.7. Standard	When the Customs cannot supply information free of charge, any charge shall be limited to the approximate cost of the services rendered.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 18D and 204.

**Discussion:**

*Law:* As discussion of Standard 9.1 explained, Customs supplies information free of charge on its website. However, a nominal fee is charged for publications and books.

Forms and guides are provided at no extra cost to registered users of PACCS and WeBoc.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Dr. Sarfraz Waraich, Collector of Customs, MCC, Sambrial.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Saeed Jadoon, Additional Collector, MCC, Peshawar.
- Mr Nasir Chandna, Customs Clearing Agent, Customs House, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No Recommendations are deemed necessary at this time.

9.8.Standard	At the written request of the person concerned, the Customs shall notify their decision in writing within a period specified in national legislation. Where the decision is adverse to the person concerned, the reasons shall be given and the right of appeal advised.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- The Customs Act; Sections 179 (3), 193(1), 193-A (4)(5), 194-B (1)(3), 195 and 195-C(3A)(4).
- The Customs Appellate Tribunal Rules; (Notification Number SRO 897(I)/2006 dated 01-09-2006).

**Discussion:**

*Law:* Sections 179 (3) of the Customs Act read with 193(1), 193-A (4)(5), 194-B (1)(3) *ibid*- read with Customs Appellate Tribunal Rules; (Notification No. SRO No. 897(I)/2006 dated 01-09-2006) - 195, 195-C (3A) (4) *ibid*, provide for a decision in writing, within a specified period and communication thereof to the concerned party.

For other administrative actions, e.g. in cases of omission and in certain administrative matters such as refusal to grant "Duty and Tax Remission for Exports" (DTRE), grant of a license (e.g. to a person desirous to be appointed as a "clearing Agent") and in various types of administrative representations appeal is not available. Yet such a decision or omission to pass an order can be contested before a High Court through a constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 or through a "complaint" to the Federal Tax Ombudsman (FTO) under the provisions of section 9 of "The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000)" and "Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001" made there under.

Written requests to Customs are responded to depending on their substance and merit. Where a request creates or extinguishes a substantive right, the person is given opportunity of explaining his defense before an adverse order is passed. In such matters the order is in writing, duly communicated to the person and, if there is no provision in law for appeal, the person may represent against such decision to the next senior officer. But there is inertia against reversing a decision of the immediate subordinate and it is rarely done.

The following alternate courses for relief are also available but are a matter of last resort:

- Representation to Chairman, FBR under FBR Act, 2007.
- Filing a Complaint to Federal Tax Ombudsman

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Stake holders and resource persons comment Customs officials do respond to requests, but often in less that professional or casual manner. This causes credibility gaps. In specific matters, officials believe that requests must be lodged directly with the office dealing with the matter. Given the lack of explanation of organizational responsibility, the requesting person has to visit many offices and officials to gain an answer. Added to this is a lack of motivation to provide good customer service and a fear of potential disciplinary action if

From these discussions, one can gather that there is a larger issue of service structure and management design. Service orientation of Customs cadres so as to strive to attend to the interested

persons professionally is highly desirable. Moreover the public contact function requires to be allocated to one contact person in each setup with adequate staff and resources.

**Resource persons:**

- Mr. Amir Muhammad Khan Marwat, Chief Collector of Customs (South), Custom House, Karachi.
- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), MCC, Islamabad
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in partial compliance with the Standard.

**Recommendations:** It is recommended that in matters where an appeal or some other statutory remedy is not provided, a new forum of “departmental appeal/revision” be created. Decisions of officers up to additional collector would be subject to revision by the Collector of Customs of the same Model Collectorate of Customs, provided that such act or omission contravenes any statutory provision or rules, instructions or orders. Similarly, an order or omission to pass an order, by a Collector of Customs may be made subject matter of revision before the respective Chief Collector

In order to give effect to this recommendation the following amendments in the Customs Act, 1969 may be considered:

After section 195 of the Customs Act, 1969, a new provision may be inserted, providing for revision as discussed in the preceding paragraph.

OR

As an alternate recommendation, such orders may be made appealable before the Collector of Customs (Appeals) having jurisdiction.

FBR/Customs may set up contact points in each office for receiving requests from interested persons, and getting these responded to or disposed of by concerned authorities and to report progress on disposal/pendency.

9.9.Standard	The Customs shall issue binding rulings at the request of the interested person, provided that the Customs have all the information they deem necessary.
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**Overall Assessment:** Partially Compliant

**Relevant Law:**

- Customs General Order 12 of 2002; Chapter-II

**Discussion:**

**Law:** The Federal Board of Revenue has framed a procedure in Chapter-II of Customs General Order 12 of 2002 to issue advance rulings on matters of Customs classifications. This relates to establishment of a Classification Committee in Model Collectorate of Customs (Appraisement), Karachi in which representatives of other Collectorates, subject experts as well as nominees of the trade community sit and deliberate before giving advance rulings. The procedure is contained in Chapter-II of CGO 12/2002.

This procedure has been working very effectively and smoothly since then. It has settled some lingering issues of classification of goods and thus has added to efficiency in assessment and also enhanced transparency. This system of collective deliberation has also helped in improving understanding of personnel in relation to matters of classification of goods.

The scope of the aforementioned Classification Committee is, however, restricted to issuance of rulings on classification of goods under Pakistan Customs Tariff only, whereas the scope of the Standard is much wider. It may include applicability of a notification, having a bearing on the rate of duty or the principles to be adopted for the purposes of determination of value of the goods under the provisions of the Customs Act, 1969.

**Practice:** According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton, Advocate and Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are partially in compliance with the Standard.

**Recommendation:** It is recommended that such mechanisms for advance rulings on other Customs matters be permitted. The Federal Government may constitute an authority for giving advance rulings, which may consist of a retired judge of the Supreme Court as Chairperson and two officers of the FBR/Customs, equivalent to the rank of Additional Secretary.

For this purpose the pattern adopted by Indian Customs can be followed whereunder “the authority for advanced rulings” has been setup, and the advanced rulings pronounced by the authority are binding on the Customs authorities:

Sections 28E-28M of (Indian) Customs Act, 1962 are relevant, which read as under:

**28E. Definitions**

In this Chapter, unless the context otherwise requires,- (a) "**activity**" means import or export;

(b) "**advance ruling**" means the determination, by the authority, of a question of law or fact specified in the application regarding the liability to pay duty in relation to an activity which is proposed to be undertaken, by the applicant;

(c) "**applicant**" means a non-resident setting up a joint venture in India in collaboration with a non-resident or resident, or a resident setting up a joint venture in India in collaboration with a non-resident, making application;

(d) "**application**" means an application made to the authority under sub-section (1) of section 28H;

(e) "**authority**" means the authority for advance ruling constituted under section 28F; (f) "**chairperson**" means the Chairperson of the authority;

(g) "**member**" means a member of the authority and includes the chairperson; and

(h) "**non-resident**" shall have the meaning assigned to it in clause (30) of section 2 of the Income Tax Act, 1961 (43 of 1961).

#### **28F. Authority for advance rulings**

(1) The Central Government shall, by notification in the Official Gazette, constitute an authority for giving advance rulings, to be called as "the authority for advance rulings".

(2) The authority shall consist of the following members appointed by the Central Government, namely:-

- a) a Chairperson, who is a retired Judge of the Supreme Court;
- b) an officer of the Indian Customs and Central Excise Service who is qualified to be a member of the Board;
- c) an officer of the Indian legal service who is, or is qualified, to be, an Additional Secretary to the Government of India.

(3) The salaries and allowances payable to, and the terms and conditions of service of, the members shall be such as the Central Government may by rules determine.

(4) The Central Government shall provide the authority with such officers and staff as may be necessary for the efficient exercise of the powers of the authority under this Act.

(5) The office of the authority shall be located in Delhi.

#### **28G. Vacancies, etc. not to invalidate proceedings**

No proceeding before, or pronouncement of advance ruling by, the authority under this Chapter shall be questioned or shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the authority.

#### **28H. Application for advance ruling**

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

- (2) The question on which the advance ruling is sought shall be in respect of,-
- a) classification of goods under the Customs Tariff Act, 1975;
  - b) applicability of a notification issued under sub-section (1) of section 25, having a bearing on the rate of duty;
  - c) the principles to be adopted for the purposes of determination of value of the goods under the provisions of this Act.

(3) The application shall be made in quadruplicate and be accompanied by a fee of two thousand five hundred rupees.

(4) An applicant may withdraw his application within thirty days from the date of the application.

**28-I. Procedure on receipt of application**

(1) On receipt of an application, the authority shall cause a copy thereof to be forwarded to the Commissioner of Customs and, if necessary, call upon him to furnish the relevant records:

PROVIDED that where any records have been called for by the authority in any case, such records shall, as soon as possible, be returned to the Commissioner of Customs.

(2) The authority may, after examining the application and the records called for, by order, either allow or reject the application:

PROVIDED that the authority shall not allow the application except in the case of a resident applicant where the question raised in the application is,-

- a) already pending in the applicant's case before any officer of customs, the Appellate Tribunal or any court;
- b) the same as in a matter already decided by the Appellate Tribunal or any court: PROVIDED FURTHER that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

PROVIDED ALSO that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the Commissioner of Customs.

(4) Where an application is allowed under sub-section (2), the authority shall, after examining such further material as may be placed before it by the applicant or obtained by the authority, pronounce its advance ruling on the question specified in the application.

(5) On a request received from the applicant, the authority shall, before pronouncing its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorized representative. Explanation: For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in sub-section (2) of section 146A.

(6) The authority shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(7) A copy of the advance ruling pronounced by the authority, duly signed by the members and certified in the prescribed manner shall be sent to the applicant and to the Commissioner of Customs, as soon as may be, after such pronouncement.

**28J. Applicability of advance ruling**

(1) The advance ruling pronounced by the authority under section 28-I shall be binding only,-

- a) on the applicant who had sought it;
- b) in respect of any matter referred to in sub-section (2) of section 28H;
- c) on the Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.

**28K. Advance ruling to be void in certain circumstances**

(1) Where the authority finds, on a representation made to it by the Commissioner of Customs or otherwise, that an advance ruling pronounced by it under sub-section (6) of section 28-I has been obtained by the applicant by fraud or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of this Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner of Customs.

**28L. Powers of authority**

(1) The authority shall, for the purpose of exercising its powers regarding discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

**28M. Procedure of authority**

The authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.]”

## Chapter 10: Appeals in Customs Matters

10.1.Standard	National legislation shall provide for a right of appeal in Customs matters.
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**Overall Assessment:** Substantially Compliant

### Relevant Law:

- The Customs Act; 185-F, 193, 194-A and 196.
- The Establishment of the Office of Federal Tax Ombudsman Ordinance; Section 9.
- Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations.
- The Federal Board of Revenue; Section 7

### Discussion:

**Law:** This Standard stipulates that there shall be a provision for a right of appeal in National legislation, in Customs matters.

In RKC, the term "National legislation" is defined as follows:

(d) "**National legislation**" means laws, regulations and other measures imposed by a competent authority of a Contracting Party and applicable throughout the territory of the Contracting Party concerned, or treaties in force by which that Party is bound;

Similarly the term "appeal" in Chapter 2 of the General Annex to RKC is:

E1./F23. "**appeal**" means the act by which a person who is directly affected by a decision or omission of the Customs and who considers himself to be aggrieved thereby seeks redress before a competent authority;

The Customs Act provides an elaborate system of appeals vide sections 185-F, 193, 194-A and 196 thereof. Section 193 has further been modified through Finance Acts 2006 and 2012, providing appeals against any decision or order passed under sections 33(refund to be claimed within one year, 79 (goods declaration and assessment for home consumption or warehousing) and 80 (checking of goods declaration by the Customs). The law thus provides remedies of Appeal to aggrieved persons in both civil and criminal liabilities of a vast variety. This system extensively covers the scope of this Standard.

Simultaneously, when an appeal is in progress, the appellant can file application with FBR for an out-of-court option for alternate dispute resolution, in accordance with section 195-C of the Customs Act. However, in certain administrative matters such as refusal to grant 'Duty and Tax Remission for Exports' (DTRE) permission/license and rejection of various types of administrative representations, remedy of appeal is not available. But such a decision or omission to pass an order can be assailed before the High Court through a constitutional petition or can be agitated in a complaint to the Federal Tax Ombudsman (FTO) under the provisions of 'The Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000)' read with 'Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations, 2001' made thereunder. In addition, under section 7 of the Federal Board of Revenue Act, 2007, a representation can also be made to the Chairman, Federal Board of Revenue, *inter-alia*, in hardship and corruption cases. However, as the two remedies mentioned above, are not in nature of a regular appeal, hence the law is not compliant with the Standard, to this extent.

FBR/Customs have made the following comments:

Customs Act provides a clear mechanism for appeal and the tax payer has multiple layers of appellate authorities available for providing legal remedies. As an addition, the WeBOC system gives the importers two 'rights of review'. He can request a review of the assessment made by the appraising officer, and if is not satisfied by the Principal Appraiser's decision, can

file a final request electronically to the Assistant Collector. Appeal against the AC's decision is heard by the Collector Appeal

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Ishtiaque Ahmed, Advocate, Peshawar (Former Assistant Collector, Law, RTO, Peshawar and at present practicing law in the field of customs, excise and sales tax).
- Mr. Muhammad Arif Moton, Advocate, Karachi (Former Member (Technical), Customs Appellate, Tribunal 3, Karachi).

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the Standard.

**Recommendations:** It is recommended that where an appeal is not provided against an act or omission of a customs authority, the said act or omission may be made subject to revision by statutory forum of revision authority i.e. an act or omission of officers up to level of:

- Additional collector be made subject to revision by a forum of two or three additional collectors in the same Model Collectorate of Customs or a Collector of Customs Appeals.
- An act or omission by a Collector of customs may be made subject to revision by the Chief Collector, having jurisdiction.

10.2.Standard	Any person who is directly affected by a decision or omission of the Customs shall have a right of appeal.
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**Overall Assessment:** Substantially Compliant

**Relevant law:**

- The Customs Act; Sections 185-F, 193, 194-A and 196.
- The Establishment of the Office of Federal Tax Ombudsman Ordinance; Section 9
- Federal Tax Ombudsman Investigation and Disposal of Complaints Regulations
- The Federal Board of Revenue; Section 7.

**Discussion:**

*Law:* In view of the discussion made with reference as to Standard 10.1, the requirements of this Standard stand fulfilled, to a great extent as there is a right of appeal against orders issued quasi judicially and judicially.

However, in order to make the Customs Act fully compliant, it is recommendable that in matters where an appeal or any other statutory remedy is not provided, a new forum of “departmental revision” may be created making such decisions of officers up to Additional Collector subject to revision by a forum of two or three Additional Collectors in the same Model Collectorate of Customs. Similarly, an order or omission to pass an order, by a Collector of Customs may be made subject matter of revision before the respective Chief Collector. An order so passed may then be subject matter of appeal before the Collector of Customs (Appeals), in the former case and subject matter of appeal before the Appellate Tribunal of Customs, in the latter case.

In certain administrative matters such as refusal to grant of concessions under “Duty and Tax Remission for Exports” (DTRE) scheme, grant of a warehouse license and in various types of administrative representations, after due deliberation, remedy by way of an appeal has not been found appropriate since on the one hand the said matters are not of grave nature and on the other hand they may arise out of day to day functions. Hence such matters may require expeditious/speedy redress/disposal, for which remedy by way of a revision application seems to be more adequate.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Nasir Khan, Collector of Customs (Appeals), Islamabad.
- Mr. Ishtiaque Ahmed, Advocate, Peshawar (Former Assistant Collector, Law, RTO, Peshawar and at present practicing law in the field of customs, excise and sales tax).
- Mr. Muhammad Arif Moton, Advocate, Karachi (Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi).

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the Standard.

**Recommendations:**

- After section 195 of the Customs Act a new provision may be inserted, providing for revision in matters where an appeal or any other statutory remedy is not provided. A new forum of “departmental revision” may be created making such decisions of officers up to Additional Collector subject to revision by a Collector of the same Model Collectorate of Customs. Similarly, an order or omission to pass an order, by a Collector of Customs may be made

subject matter of revision before the respective Chief Collector.

- FBR/Customs may issue a Customs General Order specifying the number of days (for instance within fifteen days or so) in which an order for grant of 'remission of duties and taxes', grant of license for 'Customs House Agent', for 'Bonded Transport', for 'Bonded Ware House' or similar other matters, may be passed.

10.3.Standard	The person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; 185-B, 185-F, 193-A, 194-A, 194-B and 196.
- The Freedom of Information Ordinance; Section 8

**Discussion:**

*Law:* This Standard enunciates that the person directly affected by a decision or omission of the Customs shall be given, after having made a request to the Customs, the reasons for such decision or omission within a period specified in national legislation. This may or may not result in an appeal.

In case of a regular appeal i.e. under sections 194-A of the Customs Act the legislature has provided (vide section 194-B (3) *ibid*), for sending a copy of the final Order, disposing of the appeal, to all the parties to the appeal (even without making request). Moreover, in case of disposal of an appeal under section 193-A (5), the same provision exists. Thus, the above referred-to provisions provide for even more facility to an affected person, as compared to the stipulations of RKC.

Additionally, in case of a Reference under section 196, to a High Court, though no parallel provision exists in the Customs Act, 1969, however, under the rules and procedures of the High Courts, an entitled person may apply for a certified copy and he gets the same within a limited time (normally within a week).

In case of prosecution under section 185-B and 185-F of the Customs Act though no parallel provision exists in the Act, however, under the rules and procedures of Courts, an entitled person may apply for a certified copy and may get the same within a limited time (normally within a week).

However, the real problem exists in case of (administrative) omissions and decisions, e.g. where, by taking shelter under the provisions of section 8 of the Freedom of Information Ordinance the executive authorities refuse to provide a copy of the "Note Sheet" of official file/record, even after a decision/order is made (Note sheet portion reflects the process of "decision making", in detail). Thus, there is a need to introduce an appropriate provision in the Customs Act, 1969, for incorporating the requirements of the Standard, may be before section 196-H *ibid*.

Moreover, terms 'decision' and 'order' have been used, in sections 193, 194A and 196 of the Customs Act, 1969, but the distinction between the two is not very clear and there is need to make the same clear and crisp. The former may be restricted for final order, whereas the later may be restricted for any order, short of final order.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton Advocate and Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the Standard.

**Recommendations:**

- Sections 193, 194A and 196 of the Customs Act, 1969 be amended so as to provide distinction between terms “*decision*” and “*order*”.
- Definitions of “*decision*” and “*order*” to be added in section 2 of the Customs Act, 1969.

<b>10.4.Standard</b>	<b>National legislation shall provide for the right of an initial appeal to the Customs.</b>
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 193.

**Discussion:**

*Law:* Section 193 of the Customs Act provides for appeal before Collector of Customs (Appeals). Relevant extract of section reads as under:

**193. Appeals to Collector (Appeals).-** (1) Any person including an officer of Customs aggrieved by any decision or order passed under sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector may prefer appeal to the Collector (Appeals) within thirty days of the date of communication to him of such decision or order:

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Collector (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.”

*Practice:* It appears that Customs practice follows the law.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

10.5.Standard	Where an appeal to the Customs is dismissed, the appellant shall have the right of a further appeal to an authority independent of the Customs administration.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Sections 194 and 194-A.
- The Constitution of Islamic Republic of Pakistan; Article 175(3)

**Discussion:**

*Law:* The requirements of this Standard stand fulfilled, to an extent, in shape of provisions of section 194A of the Customs Act in that an Appellate Tribunal is provided under the provisions of section 194 *ibid*. The Tribunal consists of Member (Judicial) and Member (Technical). This forum is for adjudication of the violations of civil nature (i.e. recovery of duty/ taxes and/or penalty, surcharge and/or fine).

The tenure of the members of the Tribunal is not fixed and their continuity is as such dependent upon discretion of the Government. Moreover, Article 175(3) of the Constitution provides for complete independence of the Judiciary from the Executive.

*Practice:* It appears that the practice is as per law.

**Conclusion:** Based on the above research, it appears that the law and practice are substantially in compliance with the Standard.

**Recommendations:**

- Like 'Appellate Tribunal Inland Revenue' (ATIR), the appointments of members not already in regular government service should be appointed through the 'Federal Public Service Commission', to ensure their independence.
- There should be fixed tenure for the members from FBR, at least for three years.

10.6 Standard	In the final instance, the appellant shall have the right of appeal to a judicial authority.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 185-F and 196.

**Discussion:**

**Law:** In view of the provisions of section 185-F and 196 of the Customs Act, 1969, the requirements of this Standard stand fulfilled. Section 185-F and 196 are reproduced below:

**185F. Appeal to Special Appellate Court.-** (1) Any person, including the Federal Government the Board, the Collector of Customs or Director of Intelligence and Investigation or any other officer authorized in this behalf by the Board, aggrieved by any order passed or decision made by a Special Judge under this Act or under the Code of Criminal Procedure, 1898 (Act V of 1898), may, subject to the provisions of Chapters XXXI and XXXII of the Code, within sixty days from the date of the order or decision, prefer an appeal or revision to the Special Appellate Court, and in hearing and disposing of such appeal or revision, such Court shall exercise all the powers of a High Court under the said Code.

(2) Except as otherwise provided in sub-section (1), the provisions of the Limitation Act, 1908 (Act IX of 1908), shall apply to an appeal or a revision preferred under sub-section (1).

**196. Reference to High Court. –** (1) Within ninety days of the date on which the aggrieved person or Collector 44a[or Director of Intelligence and Investigation], as the case may be, was served with order of the Appellate Tribunal under subsection(3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector 44a[or Additional Director], authorized by the Collector 44a[or Director in writing], may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.

(2) The statement to the High Court, referred to in sub-section (1), shall set out the facts, the determination of the Appellate Tribunal and the question of law, which arises out of such order.

(3) Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order, referred to in sub-section(1), may proceed to hear the cases.

(4) A reference to the High Court under this section shall be heard by a Bench of not less than two judges of the High Court and, in respect of the reference, the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply so far as may be, notwithstanding anything contained in any other law for the time being in force.

(5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.

(6) Notwithstanding that a reference has been made to the High Court, the duty shall be payable in accordance with the order of the Appellate Tribunal:

Provided that, the amount of duty is reduced as a result of the judgment in the reference by such officer as authorized by the Collector or the High Court, and any amount of duty is found refundable, the High Court may, on application submitted by the Collector, within thirty days of the receipt of the judgment of the High Court, that he wants to prefer petition for leave to appeal to the Supreme Court, make an order authorizing the Collector to postpone the refund until the disposal of the appeal by the Supreme Court.

(7) Where recovery of duty has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is made unless the reference is decided, or such order is withdrawn by the High Court earlier.

(8) Section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to an application made to the High Court under sub-section (1).

(9) An application under sub-section (1) by a person other than such officer as authorized by the Collector] the Collector shall be accompanied by a fee of one hundred rupees.

(10) Notwithstanding anything in this Act where any reference or appeal was preferred with the approval of Collector by the officer below the rank of Collector, and the reference or appeal is pending before appellate forum or the Court, such reference or appeal shall be deemed to have been preferred and shall be deemed always to have been so preferred by the Collector.”

Appellant has the right of final appeal in Section 185-F in criminal offences against the Customs. Similarly the right of further appeal is available in other Customs matters which do not amount to criminal charges against the persons. The relevant portion of the section reads as under:

**185F. Appeal to Special Appellate Court.-** (1) Any person, including the Federal Government the Board, the Collector of Customs or Director of Intelligence and Investigation or any other officer authorized in this behalf by the Board, aggrieved by any order passed or decision made by a Special Judge under this Act or under the Code of Criminal Procedure, 1898 (Act V of 1898), may, subject to the provisions of Chapters XXXI and XXXII of the Code, within sixty days from the date of the order or decision, prefer an appeal or revision to the Special Appellate Court, and in hearing and disposing of such appeal or revision, such Court shall exercise all the powers of a High Court under the said Code.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton Advocate and Former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, former Deputy Collector (Legal), MCC Appraisement, Karachi.
- Mr. Isaac Ali Qazi, Advocate Supreme Court of Pakistan, Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

10.7.Standard	An appeal shall be lodged in writing and shall state the grounds on which it is being made.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 185F, 193(2) and 194-A(3)
- The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules.

**Discussion:**

**Law:** Section 185-F of the Customs Act provides for Appeal to Special Appellate Court;

**185F. Appeal to Special Appellate Court.-** (1) Any person, including the Federal Government the Board, the Collector of Customs or Director of Intelligence and Investigation or any other officer authorized in this behalf by the Board, aggrieved by any order passed or decision made by a Special Judge under this Act or under the Code of Criminal Procedure, 1898 (Act V of 1898), may, subject to the provisions of Chapters XXXI and XXXII of the Code, within sixty days from the date of the order or decision, prefer an appeal or revision to the Special Appellate Court, and in hearing and disposing of such appeal or revision, such Court shall exercise all the powers of a High Court under the said Code.

(2) Except as otherwise provided in sub-section (1), the provisions of the Limitation Act, 1908 (Act IX of 1908), shall apply to an appeal or a revision preferred under sub-section(1).

Section 193 provides for “Appeals to Collector (Appeals)” and reads as under;

**193 Appeals to Collector (Appeals).-** (1) Any person including an officer of Customs aggrieved by any decision or order passed under sections 33, 79, 80 and 179 by an officer of Customs below the rank of Additional Collector may prefer appeal to the Collector (Appeals) within thirty days of the date of communication to him of such decision or order:

Provided that an appeal preferred after the expiry of thirty days may be admitted by the Collector (Appeals) if he is satisfied that the appellant has sufficient cause for not preferring the appeal within that period.

(2) An appeal under this section shall be in such form and shall be verified in such manner as may be prescribed by rules made in this behalf.

(3) An appeal made under this Act shall be accompanied by a fee of one thousand rupees to be paid in the manner that may be prescribed by the Board.

Section 194-A provides for “Appeals to the Customs Appellate Tribunal” and reads as under;

**194-A. Appeals to the Appellate Tribunal.-**(1) Any person 10[or an officer of Customs] aggrieved by any of the following orders may appeal to the Appellate Tribunal against such orders:-

(a) Omitted.

(a) a decision or order passed by an officer of Customs not below the rank of Additional Collector under section 179.

(b) an order passed by the Collector (Appeals) under section 193;

(b) Omitted.

(c) an order passed under section 193, as it stood immediately before the appointed day;

(d) an order passed by the Board or the Collector of Customs under section 195:

(e) an order passed in revision by the Director-General Customs Valuation under section 25D, provided that such appeal shall be heard by a special bench consisting of one technical member and one judicial member.

Provided that the Appellate Tribunal may, in its discretion, refuse to admit an appeal in respect of an order referred to in sub-section (1) where-

(i) the value of the goods confiscated without option having been given to the owner of the goods to pay a fine in lieu of confiscation under section 181; or

(ii) in any disputed case other than a case where the determination of any question having a relation to rate of duty of customs or to the value of goods for purposes of assessment is in issue or is one of the points in issue, the difference in duty involved or the duty involved; or

(iii) the amount of fine or penalty determined by such order; does not exceed fifty thousand rupees.

(2) Where the Board or the Collector of Customs is aggrieved by an order passed by the Collector (Appeals), it, or as the case may be, he may prefer an appeal to the Appellate Tribunal. Such appeal shall be preferred by an officer, not below the rank of Assistant Collector or Assistant Director so authorized in writing by the Board or the Collector or the Director, as the case may be.

(3) Every appeal under this section shall be filed within sixty days from the date on which the decision or order sought to be appealed against is communicated to the Board or the Collector of Customs, or as the case may be, the other party preferring the appeal.

(4) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within thirty days of the receipt of the notice, a memorandum of cross-objections verified in such manner as may be specified by rules made in this behalf against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section(3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by the rules made in this behalf and shall, except in the case of a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of one thousand rupees.

(7) All cases pending, immediately before the commencement of the Finance Ordinance, with the Collector (Appeals) shall stand transferred to the Appellate Tribunal for disposal in accordance with law.

(8) Notwithstanding anything in this Act where any reference or appeal was preferred with the approval of Collector of Customs by the officer of lower rank than that of the Collector and the reference or appeal is pending before an appellate forum or the Court, such reference or appeal shall be deemed to have been so filed by the Collector and for removal of doubt it is hereby declared the pending appeals shall not abate solely on this ground.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Nasir Ali Khan, Collector (Appeals), Islamabad.
- M/s Muhammad Wazir and Sajjad Haider, Assistant Registrars, Customs Appellate Tribunal, Islamabad, and Karachi.
- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

10.8. Standard	A time limit shall be fixed for the lodgement of an appeal against a decision of the Customs and it shall be such as to allow the appellant sufficient time to study the contested decision and to prepare an appeal.
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**Overall Assessment:** Substantially Compliant

**Relevant Law:**

- The Customs Act; Section 193 and 194-A.
- The Customs, Excise and Sales Tax Appellate Tribunal Procedural Rules

**Discussion:**

*Law:* Under the provisions of sections 193 and 194-A of the Customs Act sufficient time for filing appeal has been provided. These sections deal with formal appeals where quasi-judicial orders are under challenge. Against the orders of the Customs Adjudicating Authorities, thirty days are provided for filing appeal before the Collector of Customs (Appeals), while against the orders of Collector of Customs (Appeals); sixty days are provided for filing appeal before the Customs Appellate Tribunal. These time limited are to study the contested decision and to prepare an appeal.

However, in order to make the Customs Act fully compliant, it is appropriate that in matters where an appeal or any other statutory remedy is not provided, a new forum of “departmental revision” be created making such decisions or omissions of officers up to Additional Collector (ADC) subject to revision by Collector of Customs in the same Model Collectorate of Customs. Similarly, an order or omission to pass an order, by a Collector of Customs is made subject matter of revision before the respective Chief Collector.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Nasir Ali Khan, Collector (Appeals), Islamabad.
- M/s Muhammad Wazir and Sajjad Haider, Assistant Registrars, Customs Appellate Tribunal, Islamabad, and Karachi.
- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** After section 195 of the Customs Act a new provision may be added, providing for revision;

- in matters where an appeal or any other statutory remedy is not provided, before Collector of Customs, within a period of thirty days.
- An order or omission to pass an order, by a Collector of Customs is made subject matter of revision before the respective Chief Collector.

10.9. Standard	Where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgment of such evidence.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 193.

**Discussion:**

*Law:* The Standard enunciates that where an appeal is to the Customs they shall not, as a matter of course, require that any supporting evidence be lodged together with the appeal but shall, in appropriate circumstances, allow a reasonable time for the lodgment of such evidence.

For first appeal before the Customs, only the memo of appeal along with a copy of the protested order is required. No other document is required except that the appellant himself/itself desires to file additional documents in support of his contentions.

*Practice:* In practice also, in appeals before Customs and in the second appeal before the Customs Appellate Tribunal, the appellant is not required to file supporting evidence at the time of filing the appeal and a reasonable time is generally provided for filing, where appropriate such supporting evidence as may be required. Therefore, according to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad .
- Mr. Muhammad Arif Moton, Advocate, Karachi, Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

10.10.Standard	The Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 193-A
- Customs General Order 12 of 2002; Paragraph 79.

**Discussion:**

*Law:* This Standard enunciates that the Customs shall give its ruling upon an appeal and written notice thereof to the appellant as soon as possible. So far as the provisions of sections 193A is concerned, the Customs is fully compliant. Section 193A is copied as follows:

**193-A Procedure in appeal.** (1) The Collector (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the ground of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(3) The Collector (Appeals) may, after making such further inquiry as may be necessary pass an order, within one hundred and twenty days from the date of filing of appeal or within such extended period as the Collector (Appeals) may for reasons to be recorded in writing, extend, confirm, modify or annul the decision or order appealed against:

Provided that such extended period shall not exceed sixty days unless the Board further extends at any time during the pendency of appeal:

Provided further that any period during which the hearing of an appeal is adjourned on account of a stay order or alternative dispute resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days, shall be excluded for the purpose of computation of aforesaid period.

Provided further that, where the Collector (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 32 to show cause against the proposed order.

(4) The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state that points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs.

The above mentioned legal provisions sufficiently empower the appellate authorities to examine the record of the case, documents presented by the contesting parties and even to hold an enquiry if deemed necessary, and pass orders/ruling after recording reasons for the decision. The provision of section 193A further provides that after adjudication, the appellate authority shall send a copy of his decision/ruling to the appellant, the adjudicating authority and the Collector of Customs.

In this regard FBR/Customs also issues instructions from time to time through Customs General Orders. A note given in an Order-in-Appeal is reproduced below for reference:

*NB: Any person or an officer of Customs dissatisfied with this order may file an appeal under section 194 of Customs Act, 1969 to the Customs, Excise and Sales Tax Appellate Tribunal, Islamabad Bench, Rafi Centre, Zero Point, Islamabad within 60 days of the date of issuance of this order. Any such appeal should be addressed to the Assistant Registrar of the Appellate Tribunal, Islamabad Bench, Islamabad bearing Court Fee of Rs. 1000/- (rupees one thousand only) in terms of the provisions of section 194 of Customs Act, 1969. The appeal must be accompanied by this order or an attested copy thereof bearing court fee stamp of Rs. 2.50 (rupees two and apaisas fifty only) prescribed under Schedule I, item 6 of the Court Fee Act, 1870. A copy of such an appeal should also be sent to this office for information and record.*

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

Resource persons:

- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad
- Mr. Muhammad Arif Moton, Advocate, Karachi, Former Member (Technical), Customs Appellate, Tribunal 3 at Karachi.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard.

**Recommendations:** No recommendations are considered necessary at this time.

10.11 Standard	Where an appeal to the Customs is dismissed, the Customs shall set out the reasons therefor in writing and shall advise the appellant of his right to lodge any further appeal with an administrative or independent authority and of any time limit for the lodgement of such appeal.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Section 193-A.
- Customs General Order 12 of 2002; Paragraph 79

**Discussion:**

*Law:* This Standard thus has three requirements in case an appeal is dismissed: 1) setting out the reasons therefor in writing by the Customs, 2) advising the appellant of his right to lodge any further appeal and 3) advising the appellant of time limit for the lodgment of such appeal.

So far as the provisions of sections 193-A is concerned; the Customs Act is compliant to the extent that a reasoned written order is passed, after hearing the parties. The result of the appeal is conveyed to the parties who are duly informed as to their right to file further appeal, the forum of appeal and the time limitation for filing said appeal. Section 193-A is reproduced herein below for ready reference:

**193-A Procedure in appeal** (1) The Collector (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the ground of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(3) The Collector (Appeals) may, after making such further inquiry as may be necessary pass an order, within one hundred and twenty days from the date of filing of appeal or within such extended period as the Collector (Appeals) may for reasons to be recorded in writing, extend, confirm, modify or annul the decision or order appealed against:

Provided that such extended period shall not exceed sixty days unless the Board further extends at any time during the pendency of appeal:

Provided further that any period during which the hearing of an appeal is adjourned on account of a stay order or alternative dispute resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days, shall be excluded for the purpose of computation of aforesaid period.

Provided further that, where the Collector (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 32 to show cause against the proposed order.

(4) The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state that points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.
- Mr. Nasir Khan, Collector of Customs (Appeals), Islamabad.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard

**Recommendations:** No recommendations are considered necessary at this time.

10.12.Standard	Where an appeal is allowed, the Customs shall put their decision or the ruling of the independent or judicial authority into effect as soon as possible, except in cases where the Customs appeal against the ruling.
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**Overall Assessment:** Compliant

**Relevant Law:**

- The Customs Act; Sections 193-A, 194-B and 196.

**Discussion:**

*Law:* The provisions of sections 193-A, 194-B and 196 of the Customs Act, 1969 clearly reflect that the law is fully compliant to the Standard which requires the Customs to implement the decision rendered in favor of appellant. The sections are reproduced as under;

**193-A Procedure in appeal.** (1) The Collector (Appeals) shall give an opportunity to the appellant to be heard if he so desires.

(2) The Collector (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the ground of appeal, if the Collector (Appeals) is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.

(3) The Collector (Appeals) may, after making such further inquiry as may be necessary pass an order, within one hundred and twenty days from the date of filing of appeal or within such extended period as the Collector (Appeals) may for reasons to be recorded in writing, extend, confirm, modify or annul the decision or order appealed against:

Provided that such extended period shall not exceed sixty days unless the Board further extends at any time during the pendency of appeal:

Provided further that any period during which the hearing of an appeal is adjourned on account of a stay order or alternative dispute resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days, shall be excluded for the purpose of computation of aforesaid period.

Provided further that, where the Collector (Appeals) is of opinion that any duty has not been levied or has been short-levied or erroneously refunded, no order requiring the appellant to pay any duty not levied, short-levied or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 32 to show cause against the proposed order.

(4) The order of the Collector (Appeals) disposing of the appeal shall be in writing and shall state that points for determination, the decision thereon and the reasons for the decision.

(5) On the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Customs."

**194-B. Orders of Appellate Tribunal.-** (1) The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit confirming, modifying or annulling the decision or order appealed against. The Appellate Tribunal may record additional evidence and decide the case but shall not remand the case for recording the additional evidence:

Provided that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the Tribunal may, for reasons to be recorded in writing, fix:

Provided further that the Appellate Tribunal may stay recovery of the duty and Sales Tax on filing of appeal which order shall remain operative for thirty days and during which period a notice shall be issued to the respondent and after hearing the parties, order may be confirmed or varied as the Tribunal deems fit but stay order shall in no case remain operative for more than one hundred and eighty days.

(2) The Appellate Tribunal may, at any time within one years from the date of order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under-sub-section (1) and shall make such amendments if the mistake is brought to its notice by the Collector of Customs or the other party to the appeal:

**196. Reference to High Court.** – (1) Within ninety days of the date on which the aggrieved person or Collector or Director of Intelligence and Investigation, as the case may be, was served with order of the Appellate Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector or Additional Director, authorized by the Collector or Director in writing, may prefer an application, in the prescribed form along with a statement of the case, to the High Court, stating any question of law arising out of such order.

(2) The statement to the High Court, referred to in sub-section (1), shall set out the facts, the determination of the Appellate Tribunal and the question of law, which arises out of such order.

(3) Where, on an application made under sub-section (1), the High Court is satisfied that a question of law arises out of the order, referred to in sub-section (1), may proceed to hear the cases.

(4) A reference to the High Court under this section shall be heard by a Bench of not less than two judges of the High Court and, in respect of the reference, the provisions of section 98 of the Code of Civil Procedure, 1908 (Act V of 1908), shall apply so far as may be, notwithstanding anything contained in any other law for the time being in force.

(5) The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal.

(6) Notwithstanding that a reference has been made to the High Court, the duty shall be payable in accordance with the order of the Appellate Tribunal:

Provided that, the amount of duty is reduced as a result of the judgment in the reference by such officer as authorized by the Collector or] the High Court, and any amount of duty is found refundable, the High Court may, on application submitted by the Collector, within thirty days of the receipt of the judgment of the High Court, that he wants to prefer petition for leave to appeal to the Supreme Court, make an order authorizing the Collector to postpone the refund until the disposal of the appeal by the Supreme Court.

(7) Where recovery of duty has been stayed by the High Court by an order, such order shall cease to have effect on the expiration of a period of six months following the day on which it is

made unless the reference is decided, or such order is withdrawn by the High Court earlier.

*Practice:* According to interviews with the resource persons specified below, it appears that Customs practice follows the law.

**Resource persons:**

- Mr. Muhammad Arif Moton Advocate and former Member, Customs Appellate Tribunal, Karachi.
- Mr. Javed Iqbal Butt, Former Deputy Collector (Legal), MCC Appraisement, Karachi.
- Mr. Muhmamad Jamil Khan, Law Officer, MCC Peshawar.

**Conclusion:** Based on the above research, it appears that the law and practice are in compliance with the Standard

**Recommendations:** No recommendations are considered necessary at this time.